

In The Matter Of:
United States vs.
PFC Bradley E. Manning

Vol. 12
June 28, 2013
UNOFFICIAL DRAFT - 6/28/13 Morning Session

Provided by Freedom of the Press Foundation

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VOLUME XII

IN THE UNITED STATES ARMY

UNITED STATES

VS.

MANNING, Bradley E., PFC COURT-MARTIAL

U.S. Army, xxx-xx-9504

Headquarters and Headquarters Company,

U.S. Army Garrison,

Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

_____ /

The Hearing in the above-entitled matter was held on Friday, June 28, 2013, commencing at 9:30 a.m., at Fort Meade, Maryland, before the Honorable Colonel Denise Lind, Judge.

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1 APPEARANCES :

2
3 ON BEHALF OF THE GOVERNMENT :

4 MAJOR ASHDEN FEIN

5 CAPTAIN JOSEPH MORROW

6
7 ON BEHALF OF THE ACCUSED :

8 DAVID COOMBS

9 MAJOR THOMAS HURLEY

10 CAPTAIN JOSHUA TOOMAN

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1 PROCEEDINGS,

2 THE COURT: Court is called to order. Major
3 Fein, please account for the parties.

4 MR. FEIN: Yes, ma'am. Your Honor, all
5 parties in the court last recess are again present with
6 the follow exceptions: Captain Overgaard and Captain
7 Mitroka are absent. Captain Morrow and Captain von Elten
8 are present.

9 Also, ma'am, as of this morning's start of
10 the hearing there are ten members of the media at the
11 media operations center, one stenographer, there's one
12 member of the media in the courtroom, and currently no
13 one in the overflow trailer, although it is available.

14 THE COURT: All right. Are there any
15 housekeeping matters we need to address before we
16 proceed?

17 MR. FEIN: Yes, ma'am, there is one.
18 Yesterday at the conclusion of the session prosecution
19 exhibit 178 was being read on to the record and then was
20 stopped and made publicly available both in the courtroom
21 and the media operations center. As of 0900 this

1 morning, prosecution exhibit 178, the stipulation of
2 expected testimony of Mr. Murphy was published to the
3 FOIA reading room for the public's access to it.

4 THE COURT: Thank you.

5 Mr. Coombs.

6 MR. COOMBS: Nothing from the defense, Your
7 Honor.

8 THE COURT: All right. The court is prepared
9 to rule on the government motion to admit prosecution
10 exhibits 31, 32 and 109 for identification.

11 On 10 June 2013, after hearing testimony from
12 Special Agent Mander, the court ordered parties to file
13 briefs on the admissibility of prosecution exhibits 31,
14 32 and 109 for identification.

15 On 15 June 2013 the parties filed briefs, the
16 government at appellate exhibit 567, defense at appellate
17 exhibit 568.

18 On 18 June 2013 the court heard oral argument
19 from counsel.

20 On 27 June 2010 the government recalled
21 Special Agent Mander and offered prosecution exhibits 31

1 Alpha and Bravo, and prosecution exhibits 32 Alpha and
2 Bravo for identification into evidence.

3 The court has considered the filings by the
4 parties, evidence presented, the testimony of Special
5 Agent Mander and oral argument of counsel. The court
6 finds and rules as follows:

7 On 10 June 2013 the government offered
8 prosecution exhibits 31, 32 and 109 into evidence through
9 the testimony of Special Agent Mander. On 27 June, 2010
10 the government offered prosecution exhibits 31 Alpha and
11 Bravo and prosecution exhibits 32 Alpha and Bravo into
12 evidence by the additional testimony of Special Agent
13 Mander. The government offers to authenticate
14 prosecution exhibits 31, 31 Alpha, 31 Bravo, 32, 32 Alpha
15 and 32 Bravo for identification in accordance with MRE
16 901B1, testimony of a witness with knowledge, Special
17 Agent Mander, and MRE 901B4, distinctive characteristics
18 and the like, the appearance, content, substance,
19 internal patterns or other distinctive characteristics of
20 the item taken together with all the circumstances.

21 The government offers to authenticate

1 prosecution exhibit 109 for identification as a
2 self-authenticating business record in accordance with
3 MRE 803.6 and MER 902.11, and in accordance with MRE
4 802.1, testimony of a witness with knowledge through the
5 testimony of Special Agent Mander and the attestation of
6 Mr. Christopher Butler, office manager of archive dot
7 org.

8 Findings of fact.

9 The prosecution exhibits 31, 31A, 31B, 32,
10 32A and 32B for identification.

11 One. Prosecution exhibits 31 and 32 for
12 identification are screen captures from Google cache, a
13 website that archives past versions of other websites.
14 In this case prosecution exhibits 31 and 32 for
15 identification are Google archived, Google cache archives
16 of WikiLeaks Twitter dot com postings. Special Agent
17 Mander is unfamiliar with the process of how Google cache
18 archives web postings.

19 Two. WikiLeaks has an account on the Twitter
20 website. Twitter account posts messages in chronological
21 order with the most recent on the top. All public

1 messages remain on the site indefinitely.

2 On or about August 2012, Special Agent Mander
3 accessed the WikiLeaks account on Twitter through a
4 Google search. The WikiLeaks account or, quote-unquote,
5 feed had thousands of messages making searches for
6 particular tweets onerous directly through the WikiLeaks
7 feed.

8 Special Agent Mander then looked for specific
9 WikiLeaks tweets by looking for search terms on Google.
10 The search terms caused Google to pull up the Twitter
11 website with the tweets 31 Alpha and prosecution exhibit
12 32 Alpha for identification. Prosecution exhibits 31
13 Alpha and prosecution exhibit 32 Alpha for identification
14 are screen captures taken by Special Agent Mander on or
15 about August 2012 while he was reviewing the WikiLeaks
16 tweets on the Twitter website.

17 Special Agent Mander typed in the uniform
18 research locator, URL address of each tweet in a text box
19 on the tweet capture. The URL for PE 31 Alpha for
20 identification is H T T P, colon, slash, slash, W W W dot
21 Twitter dot com, slash, pound sign, exclamation point,

1 slash, WikiLeaks, slash, status, slash, 13570878440. The
2 URL for PE 32 Alpha for identification is HTTP, colon,
3 slash, slash, W W W dot Twitter dot com, slash, pound
4 sign, exclamation point, slash, WikiLeaks, slash, status,
5 slash, 7530875613.

6 Special Agent Mander personally viewed the
7 WikiLeaks Twitter account and the tweets on that account
8 have the same web address except for a serial number
9 unique to each tweet.

10 Special Agent Mander visited the Twitter page
11 for WikiLeaks on or about 3 June 2013 and again on 27
12 June 2013. On 27 June 2013 Special Agent Mander typed in
13 the URL of PE 32 Alpha in a Google search and retrieved
14 the Twitter website with the website in prosecution
15 exhibit 32B. From the Twitter website Special Agent
16 Mander then typed in the URL for prosecution exhibit 31
17 Alpha and retrieved the tweet in prosecution exhibit 31
18 Bravo.

19 Special Agent Mander took screenshots of both
20 tweets. Prosecution exhibit 31B and prosecution exhibit
21 32B have the same URL as prosecution exhibits 31A and B,

1 and 32A, except that prosecution exhibit 31B and
2 prosecution exhibit 32B begin with the URL with HTTPS
3 rather than HTTP, and they do have not have the slash,
4 pound, exclamation, slash. Nevertheless, a search using
5 the URL for PE 31 Alpha and 32 Alpha for identification
6 in Google retrieves prosecution exhibits 31 Bravo and 32
7 Bravo for identification.

8 Also, on 27 June 2013 Special Agent Mander
9 went directly to the WikiLeaks feed on Twitter to try to
10 find the tweet in prosecution exhibits 31 and 32 for
11 identification. The feed would not let him access the
12 messages prior to March 13. Special Agent Mander has
13 never reviewed the tweets in prosecution exhibits 31 and
14 32 for identification directly from the WikiLeaks Twitter
15 feed.

16 Three. Prosecution exhibits 31, 31 Alpha, 31
17 Bravo, 32, 32 Alpha and 32 Bravo for identification have
18 the following distinctive characteristics attributable to
19 WikiLeaks. The tweets feature the WikiLeaks logo, they
20 feature the WikiLeaks name in the account name, WikiLeaks
21 used in Twitter, used on Twitter, the serial numbers in

1 the URL, and the URLs are the same for prosecution
2 exhibits 31, 31 Alpha and 31 Bravo for identification.
3 The serial numbers for prosecution exhibits 32, 32 Alpha
4 and 32 Bravo are the same. And the contents of the
5 tweets in prosecution exhibit for identification 31
6 series of exhibits and the prosecution exhibit 32 for
7 identification series of exhibits relates to the
8 information allegedly compromised by PFC Manning.

9 Four. The date and time of the tweets in
10 prosecution exhibits 31, 31 Alpha and 31 Bravo for
11 identification are the same and are actually on the
12 tweets themselves and not generated from Google cache or
13 any other Internet archive process.

14 Prosecution exhibits 31, 31 Alpha and 31
15 Bravo are screen images of the same tweet with WikiLeaks
16 label, logo, text, time, date and URL serial number. The
17 same is true for the date and time of the tweets in
18 prosecution exhibits 32, 32 Alpha and 32 Bravo for
19 identification.

20 Prosecution exhibit 109 for identification.

21 One. Prosecution exhibit 109 is a screen

1 capture from archive dot org, another website that
2 archives past versions of websites across the Internet.
3 More specifically, prosecution exhibit 109 for
4 identification is a web page from archive dot org
5 purporting to show a WikiLeaks dot com web page available
6 on the Internet.

7 On 5 November 2009 at 0613:30 Special Agent
8 Mander has not reviewed the original WikiLeaks dot com
9 with web page that the archive dot org web page purports
10 to have archived as prosecution exhibit 109 for
11 identification. He also has no personal knowledge of the
12 method or standards employed by archive dot org in
13 creating and maintaining their web page or with methods
14 or standards used to capture web pages by third-party
15 donors to archive dot org.

16 Three. On 15 June 2013 the parties submitted
17 briefs on the admissibility of prosecution exhibits 31,
18 32 and 109 for identification. As additional evidence to
19 authenticate prosecution exhibit 109 for identification
20 in accordance with military rule of evidence 902.11 and
21 military rule of evidence 901B2, the government submitted

1 an attestation certificate from Mr. Christopher Butler,
2 office manager of archive dot org, dated 12 June 2013,
3 appellate exhibit 567, enclosure one. That attestation
4 reads I swear or affirm that each of the following is
5 true regarding the attached records to the best of my
6 knowledge and belief.

7 One. I am an employee familiar with the
8 manner and process in which these records are created and
9 maintained.

10 Two. To the best that the electronic systems
11 involved can accurately record and reflect, such files
12 were captured at or near the time of the date reflected
13 in the URL assigned to each file by virtue of an
14 automated transfer of electronic data.

15 Three. Such records were captured by
16 Internet Archive or received from third-party donors in
17 the course of regularly conducted business by the
18 Internet Archive.

19 Four. The records are true and accurate
20 copies of the original documents in Internet Archive's
21 Wayback machine service at web dot archive dot org.

1 The court notes the attached record to this
2 attestation is entitled, draft, the most wanted WikiLeaks
3 of 2009 - sort with the same content and URL as
4 prosecution exhibit 910 for identification.

5 Four. The defense also submitted an
6 attestation from Mr. Butler dated 13 June 2013, enclosure
7 10 of the defense brief, appellate exhibit 568. The
8 attestation reads as follows.

9 One. I am the office manager at the Internet
10 Archive located in San Francisco, California. I make
11 this declaration of my own personal knowledge.

12 Two. Internet Archive is a website that
13 provides access to a digital library of Internet sites
14 and other cultural artifacts in digital form. Like a
15 paper library, we provide free access to researchers,
16 historians, scholars and the general public. The
17 Internet Archive has partnered with and received support
18 from various institutions including the Library of
19 Congress.

20 Three. The Internet Archive has created a
21 service called the Wayback machine or a service known as

1 the Wayback machine. The Wayback machine makes it
2 possible to surf more than 240 billion pages stored in
3 the Internet Archives web archive.

4 Visitors to the Wayback machine can search
5 archives by URL, i.e., a website address. If archive
6 records for a URL are available, the visitor will be
7 presented with a list of available dates. The visitor
8 may select one of these dates and then begin surfing on
9 an archived version of the web. The links on the
10 archived files when saved by the Wayback machine point to
11 other archive files, whether the HTML pages or images.
12 If a visitor clicks on a link on an archived page, the
13 Wayback machine will serve the archived file with the
14 closest available date to the page upon which the link
15 appeared and was clicked.

16 Four. The archive data made reviewable and
17 browsable by the Wayback machine is compiled using
18 software programs known as crawlers which surf the web
19 and automatically store copies of web files, preserving
20 these files as they exist at the point in time of
21 capture.

1 Five. The Internet Archive assigns a URL on
2 its site to the archive files in the format HTTP, colon,
3 slash, slash, web dot archive dot org, slash, web, in
4 brackets, year in Y Y Y Y, end bracket, brackets, day,
5 month. Time code H H colon, M M colon, S S, brackets,
6 end bracket, slash, bracket, archive URL, end bracket.

7 Thus, the Internet Archive URL, HTTP, slash,
8 colon, colon, web dot archive dot org, slash, web, slash,
9 19970126045828, slash, HTTP, colon, slash, slash, W W W
10 archive dot org, slash, would be the URL for the record
11 of the Internet Archive home page, HTML file, parens,
12 HTTP, colon, W W W, colon, slash, slash, W W W dot
13 archive dot org, slash, end parens, archived on January
14 26, 1997 at 4:58 a.m. and 28 seconds.

15 A web browser may be set such that a printout
16 from it will display on the URL of the web page in the
17 printout's footer. The date assigned by the Internet
18 Archives supplies to the HTML file but not to the image
19 files linked therein. Thus, images that appear on a page
20 may not have been archived on the same day as the HTML
21 file.

1 Likewise, if a website is designed with,
2 quote-unquote, frames, the date assigned by the Internet
3 Archive applies to the frame set as a whole and not the
4 individual pages within each frame.

5 Six. Regarding archive files stored in and
6 made available via the Wayback machine, I further declare
7 that:

8 A. To the best that the electronic systems
9 involved can accurately record and reflect such files
10 were captured at or near the time and the date reflected
11 in the URL assigned to each file by virtue of an
12 automatic transfer of electronic data.

13 B. Such records were captured by Internet
14 Archive or received from third-party donors in the course
15 of regularly conducted activity by the Internet Archive.

16 C. The Internet Archive captures, stores and
17 receives from third-party donors web data as a regular
18 practice.

19 D. The web archives for the year 2009 and
20 the Wayback machine at web dot archive dot org were
21 largely obtained from third-party organizations which

1 donated the archive data captured by automatic electronic
2 systems to the Internet Archive.

3 I do not affirm that these web archives were
4 set forth by or from information transmitted by people
5 with knowledge of the information recorded therein.

6 Eight. This document is the Internet Archive
7 standard affidavit. The affidavit Internet Archive
8 normally provides to parties seeking to use the Wayback
9 machine records as evidence in legal proceedings with
10 additional language provided in paragraph 6 through 8.

11 Nine. Attached hereto is exhibit A are true
12 and accurate copies of printouts of the Internet
13 Archive's record of the HTM files for the URLs and the
14 dates specified in the footer of the printout.

15 Ten. I declare under penalty of perjury that
16 the foregoing is true and correct.

17 The court notes that exhibit A contains a
18 document entitled, quote, draft, the most wanted leaks of
19 2009, end quote, that is similar to defendant's exhibit
20 Foxtrot but not identical as it contains additions,
21 deletions and changes. The URL is HTTP, colon, slash,

1 slash, web dot archive dot org, slash, web, slash
2 20011042112937, slash, HTTP, colon, slash, slash,
3 WikiLeaks dot org, slash, week, slash, draft, colon,
4 underscore, most, underscore, wanted, underscore, leaks,
5 underscore, of, underscore, 2009. Thus there are at
6 least three versions of, quote, draft, the most wanted
7 leaks of 2009 available on the Internet today.

8 Hearsay relevance. The court refers to
9 prosecution exhibits 31, 31 Alpha and 31 Bravo for
10 identification together as prosecution exhibit 31 for
11 identification, and refers to prosecution exhibits 32, 32
12 Alpha and 32 Bravo for identification as prosecution
13 exhibit 32 for ID for purposes of hearsay and relevance
14 findings of fact.

15 The prosecution exhibit 31 and prosecution
16 exhibit 32 series of exhibits are the same two tweets,
17 thus hearsay relevance findings are the same for all of
18 the exhibits in the series.

19 One. The defense asserts that prosecution
20 exhibits 31 and 32 for identification and prosecution
21 exhibits 109 for identification are hearsay and that:

1 One, the statement of the web page or tweet itself is
2 hearsay; two, the statement of the individual who
3 allegedly captured the site and relayed the information
4 to archive dot org or Google dot cache is hearsay; and
5 three, the statement of archive dot org or Google dot
6 cache is hearsay.

7 Two. The government offers prosecution
8 exhibits 31, 32 and 109 for identification not for the
9 truth of the matter asserted within the exhibits; rather,
10 they are offering these exhibits to show the effect they
11 may have had on PFC Manning. The government asserts if
12 the contents of prosecution exhibits 31, 32, and 109 for
13 identification could have influenced PFC Manning, the
14 exhibits are relevant.

15 The defense asserts the government has
16 presented no evidence that PFC Manning saw or was aware
17 of prosecution exhibits 31, 32 or 109 for identification,
18 therefore, they are not relevant to any fact of
19 consequence.

20 Three. The government theory of the case
21 with respect to prosecution exhibit 109 for

1 identification is that PFC Manning viewed the WikiLeaks
2 most wanted list directly from the WikiLeaks website as
3 depicted in prosecution exhibit 109 for identification on
4 or after 5 November 2009, not that PFC Manning viewed the
5 list as depicted in prosecution exhibit 109 for
6 identification from the Internet, from the archive dot
7 org website.

8 Four. The government has presented no
9 forensic evidence that the tweets in prosecution exhibits
10 31 and 32 for identification or the most wanted list of
11 2009 in prosecution exhibit 109 for identification were
12 downloaded by PFC Manning.

13 The government has offered evidence that PFC
14 Manning conducted searches for WikiLeaks at open source
15 dot gov on Intelink, evidence of chats between PFC
16 Manning and Julian Assange that discussed open source dot
17 gov, and evidence that when conducting searches on
18 Intelink when a searcher pulls up a link on another
19 website, Intelink no longer captures the search data.

20 The law. One. Evidence must be relevant to
21 be admissible under MRE 402.

1 Evidence is relevant if it has a tendency to
2 make a fact more probable or less probable than it would
3 be without the evidence. MRE 401.

4 Three. Hearsay is a statement other than one
5 made by the declarant while testifying at the trial or
6 hearing offered in evidence to prove the truth of the
7 matter asserted. MRE 801C.

8 Four. Hearsay evidence is inadmissible
9 unless an exception applies or the evidence is offered
10 for a purpose other than to prove the truth of the matter
11 asserted. MRE 802. This rule applies to testimony given
12 by witnesses at trial and to exhibits, to the extent that
13 the exhibit contain statements.

14 Five. Statements offered to prove the
15 effects those statements may have had on the listener or
16 reader are not offered to prove the truth of the matter
17 asserted, and therefore may be considered for that
18 limited non-hearsay purpose.

19 Six. Exhibits require authentication as in a
20 condition precedent to their admission. The requirement
21 of authentication is established by evidence sufficient

1 to support a finding that the exhibit in question is what
2 the proponent claims. MRE 901A. U.S. versus Lubich, 72
3 MJ 170, Court of Appeals for the Armed Forces, 2012.

4 Seven. Authentication is an issue of
5 conditional relevance. Military Rule of Evidence 104B
6 and MRE 1008 govern the inquiry under MRE 901. Thus, the
7 court may consider only evidence offered by the proponent
8 that is admissible at trial to make a preliminary
9 determination whether the exhibits are sufficiently
10 authenticated for the fact finder to make a determination
11 that they are authenticated. Lubich, *parens*, quote, MRE
12 901 is the same as Federal Rule of Evidence 901 and
13 embraces the well-established view that authentication is
14 a component of relevancy, unquote. And citing United
15 States versus Blanchard, 48 MJ 306 at 309, Court of
16 Appeals for the Armed Forces, 1998. Quote, federal
17 courts of appeal decisions applying these principles
18 would be most helpful, end quote.

19 Federal Rule of Evidence 901, advisory
20 committee note, quote, the requirement of showing
21 authenticity or identity falls in the category of

1 relevancy dependent upon fulfillment of a condition of
2 fact and set forth by the procedures in rule, end quote.
3 Thus, only admissible exhibits may be considered by the
4 court in making its preliminary determination.

5 Eight. Two methods of satisfying the
6 authentication requirement and the methods attempted by
7 the government in moving for admission of prosecution
8 exhibits 31, 31 Alpha, 32, 31 Bravo, 32, 32 Alpha and 32
9 Bravo for identification are: One, through a witness
10 with knowledge that the exhibits are what it is claimed
11 to be or that the exhibit is what it is claimed to be,
12 MRE 901B1; and, two, evidence of distinctive
13 characteristics and the like, MRE 901B4.

14 Nine. There are no military cases directly
15 addressing the authentication requirements of online web
16 page archives, however, there are federal and state cases
17 that have addressed authentication of online web page
18 archives.

19 A. Self-authenticated business record, MRE
20 902.11, MRE 803.6. The government has provided no
21 authority where a court addressing a challenge to

1 authentication has ruled that online web page archives
2 from a non-government source are self-authenticating
3 business records. The authority is to the contrary, in
4 re: Home Store Dot Com, Inc. versus Securities
5 Litigation, 340 F.Supp. 2d 769, Central District of
6 California, 2004. Printouts from website do not bear the
7 indicia of reliability demanded for other
8 self-authenticating documents under Federal Rule of
9 Evidence 902.

10 B. Testimony by a witness with knowledge.
11 Several federal courts have addressed challenges to
12 authentication of archived websites by a witness with
13 knowledge under Federal Rule of Evidence 901B1. Courts
14 addressing the issue squarely have agreed that the
15 admission of such web pages must be predicated either
16 upon the testimony of an employee of the archiving
17 company or upon testimony of someone having personal
18 knowledge of the contents of the archived web pages such
19 that the witness can testify that the archive copy is
20 accurate.

21 The only criminal case relied upon by the

1 government as authority to authenticate archived web
2 pages in accordance with Federal Rule of Evidence are,
3 or, excuse me, 901A1, is United States versus Bansal, 663
4 F.3d 634, Third Circuit, 2011. In Bansal the government
5 called the witness to testify about how the Wayback
6 machine works and how reliable its contents are. The
7 witness also compared the screenshots with previously
8 authenticated and admitted images from the website at
9 issue and opined, based on her personal knowledge, that
10 they were authentic. The opinions did not identify who
11 the witness was.

12 The other two cases relied upon by the
13 government for an attestation FOIA witness with knowledge
14 to in accordance with Federal Rule of Evidence 901 are
15 civil cases where confrontation is not at issue. St.
16 Luke's Cataract and Laser Institute, PA versus Sanderson,
17 2006, Middle District of Florida, 2006, and Telewysa
18 Polska USA, Inc. versus Echostar Satellite Corp., 2004
19 Westlaw 2367740, Northern District of Illinois, 2004.

20 Other courts addressing the issue include
21 Sam's Riverside, Inc. versus Intercon, 790 F.Supp. 2d

1 965, Southern District of Iowa, 2011, holding that an
2 archive dot org employee can authenticate archive dot org
3 web pages.

4 United States versus Schrumm, 2011 Westlaw
5 1753488 at 1-3, Eastern District of Arkansas, 2011,
6 district court initially admitted archive dot org web
7 page sponsored by a law enforcement witness but
8 reconsidered it and excluded it. Issue was whether the
9 curative instruction to the jury was sufficient.

10 Netscape Communications Corp. versus Value
11 Click, Inc., 707 F.Supp. 2d 640 at 644, at footnote six,
12 Eastern District of Virginia, 2010. District court
13 admitted archive dot org website because sponsoring
14 witness had seen original and could testify that the
15 archive dot org page was an exact copy.

16 Specht versus Google, Inc., 592 F.Supp. 2d
17 246 at 278, Northern District of New York, 2008.
18 Defendants correctly point out that the Adams declaration
19 cannot authenticate the search results from W W W archive
20 dot org because such evidence may only be authenticated
21 by a knowledgeable employee of the website.

1 C. The only case presented to the court by
2 the parties that directly addresses authentication in
3 accordance with Federal Rule of Evidence 901A1 were where
4 a third-party has donated an archived web page to an
5 archive dot org is a civil case. Novak versus Tucows,
6 Inc., 2007 Westlaw 922306. The information at issue was
7 only as reliable as the third-party donor made it.

8 Ten. The court considers issues of hearsay
9 and whether evidence should be excluded under MRE 403 as
10 preliminary questions in accordance with MRE 104A.

11 Conclusions of law. Authentication. One.
12 The court will consider only admissible evidence offered
13 by the proponent that will go before the fact finder in
14 making a preliminary determination regarding
15 authentication.

16 Two. Prosecution exhibits 31, 31 Alpha, 31
17 Bravo, 32, 32 Alpha and 32 Bravo for identification have
18 been properly authenticated in accordance with MRE 901B1
19 by the testimony of Special Agent Mander. Although
20 prosecution exhibits 31 and 32 for identification are
21 retrieved from Google dot cache, Special Agent Mander

1 testified he retained copies of the tweets directly from
2 Twitter dot com at 31 Alpha and Bravo and 32 Alpha and
3 Bravo. These exhibits are also properly authenticated in
4 901, distinctive characteristics as set forth in the
5 court's findings of facts. 31, 31 Alpha, 31 Bravo, 32,
6 32 Alpha and 32 Bravo for identification are properly
7 authenticated.

8 Three. Prosecution exhibit 109 for
9 identification is not sufficiently reliable to be a
10 self-authenticating business record in accordance with
11 MRE 902.11 and MRE 803.6. For authentication in
12 accordance with MRE 902 or, sorry, 901, federal case law
13 on authentication issue is persuasive. A witness
14 sponsoring the admission of archived web pages must
15 either have knowledge of the archiving procedure used by
16 the archiving entity and or third-party donor entity,
17 such that the witness can testify that the archive
18 actually shows true copies of the website they purport to
19 archive or must have knowledge of the original web page
20 such that the witness can verify the archive copy is a
21 true copy of the original.

1 The government has advised the court it does
2 not intend to admit the attestation by Mr. Butler,
3 enclosure one of the government's brief. Accordingly,
4 the court finds the government has not properly
5 authenticated prosecution exhibit 109 for identification
6 and it is not admitted.

7 Four. PE 31 series of exhibits provides
8 evidence that WikiLeaks or an entity purporting to the
9 WikiLeaks posted a tweet on May 2010 requesting a list of
10 as many dot mil email addresses as possible. The PE 31
11 series of exhibits is offered by the government for
12 non-hearsay purposes. Prosecution exhibit 31 series of
13 exhibits is offered as circumstantial evidence to show
14 that PFC Manning's intent to respond to WikiLeaks
15 queries. Government witness Williamson testified that
16 the accused downloaded the U.S. forces Iraq Microsoft
17 Outlook Sharepoint Exchange Server Global Address List,
18 GAL, between 11 through 27 May 2010. This evidence is
19 relevant to specification two, charge one, aiding the
20 enemy.

21 Five. The 8 January 2010 tweet in the

1 prosecution series of exhibits state, quote, have
2 encrypted videos of U.S. bomb strikes on civilians, HTTP,
3 colon, slash, bit, period, L Y, slash, W L Afghan 2. We
4 need super computer time, HTTP, colon, slash L J F F,
5 slash, end quote.

6 The portion of the tweet stating, quote, have
7 encrypted video of the U.S. bomb strikes on video is a
8 statement. The government offers the tweet, one, as a
9 hearsay exception under MRE 803.3, then existing state of
10 mind to demonstrate WikiLeaks publicized plan to
11 compromise military information as of 8 January 2010;
12 two, for the non-hearsay purpose to show that PFC
13 Manning's awareness of WikiLeaks open and publicly
14 disclosed plan to expose classified evidence.

15 Three. For the purpose to unencrypt the video
16 for circumstantial evidence to connect the timing of the
17 to (INAUDIBLE) on Mr. Jason Katz's computer on 15
18 December 2009 with the same hash values as the Afghan
19 video in the CENTCOM server allegedly communicated server
20 -- with the video allegedly communicated to WikiLeaks by
21 PFC Manning.

1 And, four, as a hearsay exception under MRE
2 803.3 to corroborate PFC Manning's admissions that he
3 sent, sorry, he sent WikiLeaks an encrypted video in the
4 Internet chats.

5 For the reasons proffered by the government
6 above, prosecution exhibit 32 is relevant as evidence of
7 PFC Manning's knowledge of the scope of WikiLeaks's
8 intended disclosure for the specification of charge one,
9 aids the enemy, specification one of charge two, wantonly
10 causing to publish and to prove willful of the Gharani
11 video, specification one of charge two.

12 Six. Prosecution exhibit 109 for
13 identification is a request for information and is
14 offered for the fact that the request was made, not for
15 the truth of the matter asserted. The government offers
16 prosecution exhibit 109 for identification for
17 non-hearsay purpose as circumstantial evidence that PFC
18 Manning was aware of prosecution exhibit 109 for
19 identification and his intent to gather information and
20 send it to WikiLeaks.

21 Although the government has not presented

1 evidence that the accused actually accessed prosecution
2 exhibit 109 for identification, the government has
3 presented evidence that PFC Manning searched Intelink for
4 WikiLeaks and for some information on prosecution exhibit
5 109 for identification. The government also presented
6 evidence that when a person does an Intelink search and
7 navigates to another website to continue the search,
8 Intelink no longer captures the metadata.

9 The court finds the timing of prosecution
10 exhibit 109 for identification posting in conjunction
11 with other evidence presented by the government is
12 relevant circumstantial evidence offered for a
13 non-hearsay purpose to further the inference that PFC
14 Manning was aware of the information requested by
15 WikiLeaks and prosecution exhibit 109 for identification.
16 Should prosecution exhibit 109 for identification be
17 properly authenticated, it is relevant to the charges for
18 the specifications in charges one and two.

19 Seven. The court has considered whether the
20 probative value of prosecution exhibits 31 and 32 for
21 identification series of exhibits is substantially

1 outweighed by the danger of unfair prejudice under the
2 criteria of MRE 403 and finds it is not. The court as a
3 fact finder will consider the evidence for proper
4 admissible purposes.

5 Ruling.

6 The government motion to admit prosecution
7 exhibits 31, 31 Alpha, 31 Bravo, 32, 32 Alpha and 32
8 Bravo for identification is granted. The government
9 motion to admit prosecution exhibit 109 for
10 identification is denied.

11 So ordered this 27th day of June, 2013.

12 We'll have that marked as the next appellate
13 exhibit in line.

14 Is there anything else we need to address
15 before we continue?

16 MR. FEIN: No, ma'am.

17 MR. COOMBS: No, Your Honor.

18 THE COURT: All right. Is the government
19 ready to proceed?

20 MR. Von ELTEN: Yes, ma'am. United States
21 recalls Chief Warrant Officer 4 Ronald Nixon.

1 Whereupon:

2 RONALD NIXON,
3 recalled as a witness, having been previously duly
4 sworn according to law, testified as follows:

5 MR. von ELTEN: Please have a seat, Mr.
6 Nixon. Let me remind you you're still under oath.

7 Good morning.

8 THE WITNESS: Good morning.

9 DIRECT EXAMINATION

10 BY MR. von ELTEN:

11 Q. Chief Nixon, how long in your career have you
12 been involved with purchasing software?

13 A. About the time I was an E5, so sometime in
14 '96, '97 on.

15 Q. And for how long have you continued to be
16 involved with the purchase of software?

17 A. From that period on until now.

18 Q. When did you become a warrant officer?

19 A. 2001.

20 Q. What experience purchasing software did you
21 have in the years leading up to immediately after

1 becoming a warrant officer?

2 A. In the years leading up to it I was assigned
3 to a unit known as a JCSC at MacDill Air Force Base.
4 Because of the unique requirements that our customer base
5 put on us, there would be times when my team would have
6 to do purchasing of equipment or software and that was so
7 it would come to us with the requirement, we would go
8 look at the requirement, you know, look for technology as
9 applicable to that, put the bids together, put the
10 packages together, make sure it goes out to three
11 different vendors for bid, and then when it came back to
12 the J8 section we would review that with the J8 to make
13 sure they met the budgetary requirement for what our
14 customer put on us and also make sure they met the
15 technical requirements for what we were looking for.

16 Q. What types of software are you purchasing?

17 A. All kind of different software from network
18 management software, communications interface software,
19 of course services software that supported your
20 day-to-day services, things for voice over IP,
21 everything.

1 Q. How many contracts did you review during that
2 time period?

3 A. Dozens.

4 Q. How much of those accounts, of each contract
5 did you review?

6 A. For those contracts for the team level support
7 stuff it was cradle to grave, everything.

8 Q. How much of the contract did you read?

9 A. All of it.

10 Q. Did you look at the prices?

11 A. Yes. Well, we were required at times to have
12 to cross reference that because you would have a cost
13 associated with it, but suppose it went out for bid and
14 came back and it either didn't quite meet the technical
15 requirements or it didn't meet the budgetary
16 requirements, so then you've got to do that take and
17 give, you know, you've got to balance it out to make sure
18 you're getting the best bang for your buck.

19 Q. Chief Nixon, you just mentioned technical
20 review as part of the process. What is that?

21 A. Military is driven on requirements, so the

1 requirement comes to you, you make sure that, so you make
2 sure that the requirement is met to the technical
3 specifications of the contract. To put it very simply,
4 you know, if you're ordering a Ford Mustang, you order a
5 GT, you want to make sure that you get a GT, not the base
6 model. Maybe it doesn't quite meet the requirements,
7 maybe you want to be able to go faster.

8 We do the same thing when it comes to
9 software and hardware, we do the exact same thing,
10 because for instance, if you're looking at Exchange,
11 there are lots of different versions of Exchange, and if
12 I'm building a network to support 50 guys, I can skimp on
13 a lot of things and I don't need to buy a robust software
14 package. But if I'm supporting 160,000 people, I need to
15 go all out and I need to buy all those options and things
16 that come with it. So I have to make sure I'm finding
17 the happy medium.

18 Q. Let's talk about your involvement in the large
19 scale shelter program. When were you involved with that
20 program?

21 A. The large scale shelter program was the three

1 core services initiative. From 2008 when I first got the
2 three core until I left in 2012, that project ran the
3 entire time while we were there. What it was is when the
4 Army fielded the BCICS service suites for the Army as a
5 whole, the cores kind of got neglected. So each of the
6 cores, 18 first and three cores basically had to come up
7 with their own services programs to be able to support
8 Exchange, file sharing and all those things out in the
9 tactical environment, so that's what we built. We built
10 a mobile services shelter to include one that we took
11 with us to Iraq. So the entire time I was there that
12 project ran the entire gamut.

13 Q. What was your role in the contractual process
14 for that program?

15 A. For that program in particular, what we did is
16 I make sure that I was embedded in making sure that the
17 technical requirements were met for as things came in and
18 went out. When I first started there I was actually the
19 corps engineer, so the backbone of that network was
20 designed by myself and the people on my team. And then
21 as I moved over to the plans and operations shop, it

1 became more of an oversight, technical oversight and a
2 budgeting oversight to make sure we were meeting all of
3 our requirements that we specified earlier.

4 Q. How many contracts did you review as part of
5 that program?

6 A. For that contract there were three or four
7 subcontracts that ran with Billy Asbell and Worldwide
8 Technologies to help us put that package together and
9 lots of small subcontracts, but three or four major
10 contracts that interacted with the entire shelter as a
11 whole.

12 Q. How much of those contracts did you read?

13 A. All of them.

14 Q. Did you see the prices?

15 A. Yes, sir.

16 Q. What was the hardware involved in that
17 project?

18 A. So the hardware for that project, routers,
19 switches, backbone equipment, you got to be able to make
20 sure that the data can get from one place to the other,
21 the servers, the fiber channel switches to go to the

1 backbone of that rack, actual rack space, air
2 conditioning, the actual hardware for the shelter itself,
3 the cabling, all of that.

4 Q. What software was involved in that contract?

5 MR. HURLEY: Objection, ma'am. Relevance.

6 THE COURT: All right. What is the
7 relevance?

8 MR. von ELTEN: Ma'am, this is similar
9 equipment that was used in the go. Personal knowledge
10 for pricing.

11 THE COURT: All right. Overruled.

12 THE WITNESS: Repeat the question, sir.

13 BY MR. von ELTEN:

14 Q. What software was involved in the, those
15 contracts?

16 A. So for those contracts, of course, you had
17 your normal management interface software, but we also
18 had to buy all of the services software, so for all of
19 the servers that we supported, we had to buy, you know,
20 server 2008 for those, we had to buy the Exchange
21 software, and then all of the management software, the

1 management conceals, network management, even our normal
2 user stuff like Vista for the machines and XP for the
3 machines and even Office.

4 Q. Chief Nixon, let's talk a little bit about
5 your involvement with GAL infrastructure again. What was
6 your role with contracts in GAL infrastructure?

7 A. For three core or for Iraq, sir?

8 Q. For Iraq.

9 A. For Iraq, technical oversight for those
10 contracts, so making sure that the technical requirements
11 were met by the contract. And then, yeah, that was my
12 primary position for that, sir.

13 Q. What technical requirements did you consider
14 as part of those contracts?

15 A. So within those technical requirements, since
16 we're talking about software, so for Microsoft Exchange,
17 so what I would do is I'd weigh making sure looking at
18 what my customer base was, my customer base for Iraq was
19 160,000 to 200,000, that was the area that I had to work
20 within based on surge, contracted personnel, things like
21 that. So if I look at, if I look at that requirement,

1 okay, I've got to buy Exchange, I've got to buy so many
2 instances of Exchange to filter through the network, I've
3 got enterprise level servers at USFI, but then I've got
4 local instances of those servers as they push further
5 down into the network.

6 And then you have to buy what's known as a
7 CAL, which is a client access license. Okay. Client
8 access licenses are where companies like Microsoft make
9 their money. It used to be where they just sold you
10 software at a ridiculous price and that's what you paid.
11 What they've done is gone to a client access structure so
12 what you do is drive the cost of the base software really
13 low, but then you're forced to basically pay for each
14 machine and each user on your network.

15 So for Exchange, I had to buy CALs based on
16 how many databases I wanted to be able to talk to. For
17 Active Directory I had to buy CALs, or not I, but USFI
18 had to purchase CALs based on each user and machine in
19 the greater Iraq dot domain.

20 Q. How many contracts did you review for the Iraq
21 GAL?

1 A. So for the services that would be tied or used
2 for GAL, we did some server upgrades while I was there to
3 Server 2008, and we also did some hot line purchases for
4 CALs that or for units that weren't able to support
5 themselves. And then you had the, so then you had the --
6 I'm trying to run through it real quick. Sorry. That is
7 all of them.

8 Q. About how many?

9 A. There were three or four major contracts that
10 ran through that, sir.

11 Q. How much of those contracts did you read?

12 A. I read most of the technical and the pricing
13 pieces for them because we had to bounce that back off of
14 J8 for budgeting.

15 Q. Let's talk a little bit about hardware. What
16 hardware was part of those contracts?

17 A. So for contracting for hardware piece, we did
18 a network upgrade in Iraq to a MPLS backbone, cost about
19 1.2 million dollars to support the infrastructure there.
20 You also had various server moves and a few other moves.
21 So for hardware, that's a day-to-day almost regular

1 occurring cost for an organization as big as USFI.

2 Q. What types of hardware were included?

3 A. So routers, switches, backbone infrastructure
4 by the fiber network channels, servers, cabling, again
5 some thing like you run into the SLLS, air conditioning,
6 all of those kind of things kind of tie in to support a
7 network.

8 Q. You just mentioned cabling. How much cabling
9 did the GAL require?

10 A. The GAL itself you would, if you would look at
11 the cabling infrastructure within USFI headquarters or
12 even locally, it's a fairly large infrastructure of
13 cabling that requires to interconnect 64 physical
14 switches along with all of the other infrastructures that
15 takes into play, sir.

16 Q. How much does the cabling cost?

17 MR. HURLEY: Objection, ma'am. Hearsay.

18 MR. von ELTEN: Your Honor, the witness has
19 testified that he has knowledge based on the contracts
20 and the contracts are not hearsay.

21 THE COURT: I agree. That's fine. Personal

1 knowledge. Overruled.

2 THE WITNESS: So costs for the cabling
3 itself, you're really looking at physical infrastructure
4 that we had in place. Backbone switches are in the area
5 of about a hundred dollars apiece. The servers
6 themselves which are, be nice and conservative, about
7 10,000 dollars apiece. And then if you would actually
8 look at, we ran miles of cable between all of that
9 infrastructure, so it's about 56 dollars for a thousand
10 feet of CAT 5.

11 Q. What would the GAL's functionality have been
12 without cabling?

13 A. You don't have physical infrastructure, it
14 doesn't work.

15 Q. What storage, what hardware for storage was
16 contemplated under these contracts?

17 A. Well, you have to have an area for, you have
18 to have somewhere to store your stuff, just like in a
19 house you've got closets, well, for a network we've got
20 to have somewhere to do that. So our equivalent to
21 throwing everything in the garage is a SAN, a storage

1 area network. So you have a storage area network plus
2 you have the internal storage on each one of the servers
3 which in a virtual environment is a --

4 Q. How many SANs did the GAL require?

5 A. For the services piece of the network that we
6 designed there in Iraq, we had two SANs, one at the
7 backup site and the primary inside the actual
8 infrastructure itself.

9 Q. How much does a SAN cost?

10 A. About 1.2 million dollars.

11 Q. What functionality does a SAN provide?

12 A. SAN, like I said before, it gives you a place
13 to store everything at once. I'm running the network the
14 size that we ran in Iraq is really one of the more
15 complex undertakings we've gone as a military. So you
16 have to have somewhere to be able to store all of that
17 and it has to be accessible in a rapid fashion, so you
18 can't shortchange on that and just daisy chain a whole
19 bunch of hard drives together.

20 Q. What was the functionality of the GAL without
21 the SAN?

1 A. It wouldn't work. It would, you would reach a
2 point of saturation within the virtual environment and
3 the servers would crash.

4 Q. You mentioned switches a moment ago. How many
5 Nexus backbone switches did the GAL require?

6 A. We had two for each primary site, so the one
7 in the JCSC itself and one in the palace.

8 Q. How much does each of those cost?

9 A. Those were right around a hundred thousand
10 dollars.

11 Q. What functionality did they provide for the
12 GAL?

13 A. They provide rapid access to the actual
14 physical infrastructure of the servers and to the SAN
15 itself, so they would allow for rapid communications
16 across all of those platforms.

17 THE COURT: What function were we talking
18 about there?

19 MR. von ELTEN: The nexus backbone switch,
20 ma'am.

21 THE COURT: Thank you.

1 BY MR. von ELTEN:

2 Q. What would the GAL's functionality have been
3 without the nexus switch back?

4 A. Again, it kind of ties into the physical
5 infrastructure piece. If you don't have it, it doesn't
6 go anywhere.

7 Q. Chief Nixon, you also mentioned servers. How
8 many servers were required for the GAL?

9 A. We had 64 servers to support SIPR and NIPR,
10 and we had somewhere around half for the palace. So
11 about 64 for the actual primary itself.

12 Q. I believe you gave the answer. Just for
13 clarification, how much does each server cost?

14 A. About \$10,000 apiece. That's a pretty
15 conservative estimate. We ran some high-end servers over
16 there in Iraq.

17 Q. Let's talk about software now. What software
18 was covered in these contracts?

19 A. All different types of software from, again,
20 you talk about network management software, you talk
21 about management console software, and then the ones

1 we're primarily concerned with would be the Active
2 Directory for the main controller, of course Exchange,
3 and then the server platforms they sit on. I can buy
4 Exchange, but I still have to have a server platform for
5 it to sit on.

6 Q. A few moments ago you talked about CALs and a
7 few other things. Let's talk about how software is
8 contracted in terms of pricing. How generally does the
9 military pay for software?

10 A. Okay. So generally paid for depends on what
11 we're looking at. So if we had a, so if we had an Army
12 unit within somewhere in Iraq that needed something, they
13 would put a requirement's request. A requirements would
14 come to USFI. If it's not something that we can find or
15 if it's considered a program of record, which means it
16 should be taken care of by ASOL who does acquisitions for
17 POR systems in the Army, it would go to them. But if
18 it's something that we could field internally to Iraq, it
19 would go through our contract and budgeting process.

20 Where our building was located on Al Faw
21 Palace, literally cater-corner to us right across the

1 street was contract command, so we were able to interface
2 with them on a regular basis to make sure that the
3 process went smoothly.

4 Q. How was the price split up for Active
5 Directory?

6 A. Okay. So for Active Directory, I buy my
7 initial platform for Active Directory which, depending on
8 who you go to to bid for it, you get between 3500 and
9 5,000 dollars for the actual platform itself. But then
10 I've got to buy a server platform so I'm looking at 2008,
11 I have to buy an enterprise edition for that because of
12 the level of communications I have to have, so I'm
13 looking at another, again, three to five thousand
14 dollars.

15 The problem we run into there after that,
16 then you're talking about the CAL. So for every machine
17 that's added to Active Directory in Iraq, I have to have
18 a CAL for it. And also on top of that for every user I
19 have in my Active Directory list within my domain I have
20 to have a CAL for them. So pricing on the street right
21 now is between 35 and 65 dollars for a CAL for each

1 individual user or machine, so even if you were looking
2 at, even if we said we paid a dollar for a CAL, which we
3 didn't, it would be 160,000 dollars just to support the
4 users on the GAL for USFI.

5 Q. Could you please explain what a CAL is?

6 A. Okay. A CAL is a client access license.
7 Again, I come back to in the old days that software
8 companies made you pay a whole lot of money for their
9 software, so people looked at that as sticker shock, so
10 they said, okay, we'll figure out a different way around
11 this. So then they came out, Microsoft came out and they
12 reduced the cost of the actual piece, but what they did
13 is they had the client access licenses which is the
14 requirement. So for Exchange it's for you to be able to
15 communicate to databases; for Active Directory it's for
16 you to be able to add users to your domain or machines to
17 your domain. And for servers it's for number of servers
18 that I need to be able to talk to and how many instances
19 I need to be able to install it. So they come up with
20 this, it's really a smoke and mirrors piece of, yes, it
21 still comes down to the more people I have to support on

1 my network, the more expensive it gets.

2 Q. What would the GAL's functionality have been
3 without Active Directory?

4 A. It doesn't function without it. The GAL is a
5 direct product of the Active Directory global address
6 system.

7 Q. How is the pricing created for Exchange?

8 A. Okay. So for Exchange, depending on where I
9 was putting that Exchange server, so you had your primary
10 enterprise Exchange servers at USFI, and then below that
11 in each local instance you put Exchange servers further
12 down. If I've got a BCT sitting out there I don't want
13 for the staff, I don't need the S2 and the S3 email to
14 have to go all the way up to division and come back down
15 for them to do that. So I put a local Exchange server
16 there to be able to increase productivity and allow them
17 to be able to communicate with one another so that most
18 of my communications going out of the organization are
19 server to server, so that helps me scale it a little bit.

20 And then after that, so that allows me to
21 figure out how many licenses I have to buy for the base

1 software, and then my user and my machine population help
2 me dictate how many calls that I have to buy to support
3 that.

4 Q. Based on all of that, how much money was spent
5 on Exchange software?

6 A. For Exchange software the enterprise license
7 for Exchange software would have run us, very
8 conservative estimate, about \$60,000 for the USFI
9 headquarters.

10 MR. Von ELTEN: Thank you.

11 THE COURT: Cross examination.

12 MR. HURLEY: Yes, ma'am.

13 CROSS EXAMINATION

14 BY MR. HURLEY:

15 Q. Good morning, Chief Nixon.

16 A. Good morning. Sir.

17 Q. Now, on direct examination you talked with the
18 government about the cost of maintaining the Active
19 Directory?

20 A. Yes, sir.

21 Q. And I just want to go over this Active

1 Directory, Global Address List distinction again?

2 A. No problem, sir.

3 Q. All of the infrastructure that you're talking
4 about with Captain von Elten, that was about the
5 infrastructure to maintain the Active Directory?

6 A. To maintain services.

7 Q. Right. And the Active Directory is the thing
8 that maintains services, or one of them?

9 A. It is the backbone for your services, yes,
10 sir.

11 Q. Right. And one of the services that the
12 Active Directory provides, an important function is the
13 Global Address List?

14 A. Yes, sir.

15 Q. Chief, I can tell from your uniform that
16 you're an Army officer?

17 A. Yes, sir.

18 Q. So let's use Army C2 notes when we talk about
19 the structure of the database.

20 A. No problem, sir.

21 Q. The database you worked with in the one in

1 Iraq is the one I'm going to talk about.

2 A. Yes, sir.

3 Q. The lowest Army echelon with the Active
4 Directory is the brigade?

5 A. Yes, sir.

6 Q. Thus the lowest echelon with the Global
7 Address List is the brigade?

8 A. Yes, sir.

9 Q. The brigade's subordinate units instead of
10 having their own Active Directory and Global Address
11 List, they'll just plug into the brigade's?

12 A. Well, battalion services are provided by the
13 brigade. It's not a separate network. They sit within
14 the brigade's services.

15 Q. Got you. So we move up the chain a division
16 level in the Army is going to have an Active Directory
17 and a Global Address List?

18 A. Yes, sir.

19 Q. And subordinate brigades will be a part of the
20 division's active Global Address List?

21 A. Yes. To a degree. The brigades maintain

1 their own Active Directory, their own services
2 environment, and those services talk to division
3 environment on a server level to maintain communications.
4 So you don't want the division providing service to the
5 brigade, it tends to clog the networks.

6 Q. So the brigade Active Directory plugs into
7 their superior's Active Directory, is that the best way
8 to describe it?

9 A. Yes, sir.

10 Q. And then the divisions for the time that
11 you're in Iraq, we've done away with multinational corps
12 Iraq, right?

13 A. Yes, sir.

14 Q. So at this point USFI had direct control over
15 the divisions?

16 A. Yes, sir.

17 Q. So the division Active Directory GAL would
18 plug into USFI?

19 A. Yes, sir.

20 Q. Now, you testified that you've seen
21 prosecution exhibit 47 which is the CD that the Global

1 Address List is located on?

2 A. Yes.

3 Q. And you also testified that you had seen
4 before, you testified before that you saw a piece of
5 paper with the Global Address List, a representation of
6 prosecution exhibit 147?

7 THE COURT: What prosecution exhibit is that?

8 MR. HURLEY: The CD, ma'am?

9 THE COURT: No. The paper.

10 MR. HURLEY: 147, ma'am.

11 THE WITNESS: Yeah, the digits and the actual
12 physical printout, yes, sir.

13 BY MR. HURLEY:

14 Q. Do you call to mind the prosecution exhibit
15 147 so that we don't have to --

16 A. Yeah, that's fine, sir.

17 Q. All right. Now, that appeared to be a GAL?

18 A. Pieces of the GAL, yes, sir.

19 Q. Now, we just talked about there are different
20 GAL levels, right?

21 A. Yes, sir.

1 Q. And do you have an opinion as to what level
2 this GAL was?

3 A. Yes, sir.

4 Q. To you, prosecution exhibit 147 is a division
5 level GAL?

6 A. Yes, sir.

7 Q. Not a brigade level GAL?

8 A. No.

9 Q. Not the USFI level GAL?

10 A. No.

11 Q. But a division GAL?

12 A. Yes, sir.

13 Q. Now, just to sum up something I started off
14 with because I wanted to clear up that confusion. The
15 maintenance costs that you talked about were costs
16 associated with an Active Directory?

17 A. Yes, sir.

18 Q. And the maintenance cost, there are no
19 maintenance costs specific to the Global Address List?

20 A. If you're talking about actual software costs,
21 you're correct, but you still have a maintenance cost in

1 there with personnel. You can't get away from that.

2 Q. The personnel to keep up the Global Address
3 List?

4 A. Yes, sir.

5 Q. And those personnel would be those people on
6 help desks?

7 A. They would be in charge of, they would run
8 adding and taking away from the Global Address List, but
9 overall maintenance piece to that would belong to the
10 individual managing the Active Directory for that piece.

11 Q. For that part of the organization?

12 A. Yes. So if you're looking at the division,
13 they had, of course they had your division staff and you
14 had ITT contractors that also supported that piece for
15 the divisions.

16 Q. Okay. And then, now, when it comes to this
17 distinction between the Active Directory and the Global
18 Address List, the Active Directory could run without the
19 Global Address List?

20 A. Yes.

21 Q. But I can tell the concern on your face, but

1 that would be a very difficult function to have just an
2 Active Directory and not a Global Address List?

3 A. I would say vice versa, I would say the exact
4 opposite. I would say that, yes, I can have, I can,
5 because of the way Active Directory is set up, the Active
6 Directory is a directory, everything sits on your domain.
7 So if for some reason the Active Directory wasn't able to
8 produce a GAL, that would mean that I didn't have
9 anything in Active Directory, I wouldn't have any user, I
10 wouldn't have any clients, I wouldn't have any machines.
11 So it's really hard to separate the two because --

12 Q. They are so closely tied together?

13 A. One is a direct product of the other.

14 Q. And that is the GAL's a direct product of the
15 Active Directory?

16 A. Yes.

17 Q. Got it. Thanks, Chief.

18 Now, let's talk about these contracts as they
19 would come into your organization in the J6 when you were
20 in USFI I'm talking about.

21 A. Yes, sir.

1 Q. As the contracts would come in, would they
2 come in as operational need statements or how does the,
3 how do those two things work together?

4 A. It would depend. Again, nature of the
5 request. For an operation needs statement, you have two
6 operational need statements, you have one that's an Army
7 driven piece and you have one that's a joint piece. For
8 instance, everything that provided theater provided
9 equipment in Iraq would have been a joint operational
10 needs statement, because everything was provided out of
11 CENTCOM budgeting and down to USFI and filtered out to
12 the network.

13 So odds are if you had a machine that was
14 sitting on an Iraq dot mil network or domain, then that
15 machine was provided as TP equipment, more than likely
16 was provided as TPE equipment and filtered down. So
17 through a joint statement or going down through the
18 process. For an Army organization, so if I'm --

19 Q. Brigade combat team?

20 A. Brigade combat team, 41 Army dot mil
21 infrastructure, that would have had to have gone through

1 the DA, Department of the Army process. Again, it comes
2 up through USFI headquarters and goes out through there,
3 so we would be the brokers for them to the Department of
4 Army on something like that. So you had two ONs
5 processes for those pieces. And then you also had a
6 localized inner theater process for something if we would
7 fill it in theater, we would do so.

8 Q. So those contracts that you're talking about
9 with Captain von Elten and the money you spent, was that
10 a product of the in theater needs process?

11 A. Some of them were. So, for instance,
12 day-to-day updates, things like that, so software update
13 for Server 2008, or trying to get 2003 out of the
14 network, trying to upgrade to 2008, that would be
15 something we fund internally from USFI budgeting.

16 And again, anything, but for instance, the
17 network backbone infrastructure upgrade that we talked
18 about, that went up to CENTCOM and then back out because
19 we didn't want to pay for it because it was for the state
20 department eventually as we turned things over, but also
21 because it was a massive chunk of our budget.

1 THE COURT: What was that for?

2 THE WITNESS: That was for the network
3 upgrades, ma'am.

4 THE COURT: Thank you.

5 BY MR. HURLEY:

6 Q. What I want is the general practice, not
7 specific to ONs or this contract or I'm leading into
8 another question I was going to ask you, Chief.

9 A. No problem.

10 Q. So the general practice was this document
11 would come into the J6, come into your shop, you would
12 take it and first review it for a technical review?

13 A. Yes, sir.

14 Q. And as you were doing the technical review,
15 you would also have input into the budgeting requirements
16 that were included in this document?

17 A. Yes, sir.

18 Q. And as you had input, you would vet the cost
19 yourself, the costs associated with these things?

20 A. No. No.

21 Q. You would not.

1 A. No. So the cost for the vetting process would
2 come in if requirements weren't able to be met based on
3 whatever J8 was able to provide for cost. So we would
4 look at them from a, yes, you need to buy this many CALs,
5 maybe 60 bucks a pop is way too much, you need to
6 reconsider, but as part of the overall vetting process
7 the J6 is not the money stamp, the J8 is.

8 Q. Got you. And that's exactly the people I want
9 to talk to you about.

10 A. Yes, sir.

11 Q. So there would be an internal process inside
12 the J6?

13 A. Yes, sir.

14 Q. A technical process?

15 A. Yes, sir.

16 Q. A cost process?

17 A. Yes, sir.

18 Q. Then you'd have to walk down the stairs or
19 down the hall, however you got there to the J8?

20 A. Yes, sir.

21 Q. And the J8 are the resource managers, were the

1 resource managers for the USFI?

2 A. They are the pocketbook.

3 Q. The money spenders?

4 A. Right.

5 Q. Before you went down there, you knew that you
6 needed to have a defensible thing that you wanted?

7 A. Yes, sir.

8 Q. And the cost?

9 A. Yes, sir.

10 Q. And before you go down there, you have to take
11 a hard look at that cost, is that correct?

12 A. Yes.

13 Q. To make sure that not only does it cover the
14 thing you need, right?

15 A. Yes, sir.

16 Q. But also some, because you're very experienced
17 and this wasn't your first trip to Iraq, the extra to
18 address easily anticipated things that you'll need along
19 the way, right?

20 A. Yes, sir. Just like when we're talking about
21 CALs, we, you know, the Iraq network at its apex was

1 about 160, 165,000 people on the GAL, but we had to have
2 a cushion for, we had to cushion between 40 and 50,000
3 calls, and a lot of those we ended up issuing out to TAC
4 organizations for their own use.

5 Q. Had to have a cushion?

6 A. Yes, sir.

7 Q. Had to have or not, it was extraordinarily
8 prudent to have a cushion?

9 A. Yes.

10 Q. Any action that you send down to J8, it's good
11 to have a defendable cushion so you can get all the money
12 you need?

13 A. Yes, sir.

14 Q. Fenced.

15 A. Yes, sir.

16 Q. And by fenced I mean saved for use so that you
17 can spend it on the thing that you want.

18 A. Yes, sir.

19 Q. Let's talk about this infrastructure, Chief.
20 You said there were 64 NIPR servers that supported the
21 Active Directory Global Address List?

1 A. Yes, sir.

2 Q. And more virtual service that supported this?

3 A. Yes, sir.

4 Q. Routine problems that you had with these
5 during your deployment?

6 A. You always had network outages. It's a
7 massive network, at times, at best you're working on
8 questionable infrastructure at best, so you also have
9 bandwidth issue or something like that.

10 Q. Band width issue is something you'd
11 characterize as a small problem?

12 A. Not always.

13 Q. Scaleable?

14 A. Yes.

15 Q. A big problem, satellite outage would be a big
16 problem?

17 A. Yes, sir.

18 Q. But those problems were routinely addressed
19 during this 2009, 2010 timeframe?

20 A. Yes, sir.

21 Q. As I understood from what you told me

1 yesterday, 90 percent network reliability is standard for
2 deployment?

3 A. Between 90 and 95 percent is the standard. We
4 definitely, district 99.999 percent. That's district
5 standard for fixed infrastructure. Tactical
6 infrastructure, acceptable is 95 and better. And we
7 definitely were well within that piece, between that 95
8 and 99 percent, we were, for the most part we were there.

9 Q. And just weren't static on Victory Base
10 complex, were you, Chief, during this deployment?

11 A. Not at all.

12 Q. You went all over the country?

13 A. Yes, sir.

14 Q. Trying to keep different units at different
15 echelons plugged into the network and communicating
16 properly?

17 A. Yes, sir.

18 Q. And when we talked yesterday, you said the
19 USFI network while you were there had a reliability
20 rating of 97 percent?

21 A. Yes, sir.

1 Q. And that applies to both the Active Directory
2 and the Global Address List?

3 A. Yes, sir.

4 Q. To your knowledge, was the Global Address List
5 ever unavailable because servers were stolen?

6 A. No, sir.

7 Q. To your knowledge, were they ever moved, and
8 by they, I mean the servers by someone not authorized to
9 move them?

10 A. We had equipment moved at times, sir, you
11 know, brigade commander walks in and says I don't like
12 that crap right there, I want you to move it over there.
13 We ran into issues like that. But sitting on the net
14 work, the way you sat on a network it was something that
15 was easily identifiable, so they'd get the call. What
16 are you guys doing down there?

17 Q. So even at USFI you had visibility such that
18 if a server is pulled off?

19 A. Yeah, yeah, you would see it within moments.

20 MR. HURLEY: Just one second, I want to look
21 at some notes.

1 THE WITNESS: Okay.

2 MR. HURLEY: Thanks, ma'am. Nothing further.

3 THE COURT: Redirect.

4 MR. von ELTEN: Nothing, ma'am.

5 THE COURT: I don't think I have anything
6 either. Temporary or permanent excusal?

7 MR. Von ELTEN: Temporary, ma'am.

8 THE COURT: Chief, once again you're
9 temporarily excused. Please don't discuss your testimony
10 or knowledge of the case with anyone other than the
11 counsel or the accused.

12 THE WITNESS: Thank you, ma'am.

13 THE COURT: Counsel, do you want to proceed
14 or is this a good time for about a ten minute recess.

15 MR. FEIN: Great time, ma'am.

16 THE COURT: Ten minutes sufficient?

17 MR. FEIN: Yes, ma'am.

18 THE COURT: We'll make it 13. Court is in
19 recess until eleven o'clock.

20 (BRIEF RECESS.)

21 THE COURT: Court is called to order. Major

1 Fein, please account for the parties.

2 MR. FEIN: Yes, ma'am. All parties in the
3 court last recess are present with the following
4 exceptions: Captain von Elten is absent, Captain Whyte
5 is present.

6 THE COURT: Is there anything we need to
7 address before we proceed?

8 MR. FEIN: No, ma'am.

9 MR. COOMBS: No, Your Honor.

10 THE COURT: All right. Government.

11 MR. FEIN: Ma'am, the United States calls
12 Colonel David Miller.

13 Whereupon:

14 DAVID MILLER,
15 called as a witness, having been first duly sworn
16 according to law, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. FEIN:

19 Q. Sir, you are Colonel David Miller, the current
20 chief of staff of the First Infantry Division?

21 A. I am.

1 Q. And, sir, how long have you been the chief of
2 staff for?

3 A. A couple of weeks.

4 Q. And, sir, what are your responsibilities as
5 the chief of staff of First ID?

6 A. In general I run the day-to-day business of
7 the division at Fort Riley and its outlying satellites.

8 Q. And what was your position before becoming the
9 chief of staff of the First Infantry Division?

10 A. I was the commander for Brigade Modernization
11 Command at Fort Bliss, Texas.

12 Q. And what is the modernization command?

13 A. It is a subunit for a training command. We
14 conduct, they conduct now twice a year network
15 integrative evaluations in order to do doctrine
16 organization training material and leadership evaluations
17 and then recommendations to the chief of staff of the
18 Army to provide the latest equipment and techniques to
19 deploying units.

20 Q. And, sir, what were your actual
21 responsibilities within the brigade -- excuse me -- the

1 command?

2 A. Yeah. I essentially ran, had oversight of the
3 planning and the execution of each of those network
4 integrative evaluations that were done twice a year.

5 Q. And, sir, how long were you the deputy
6 commander of that command?

7 A. Two years.

8 Q. And what was your duty position prior to
9 assuming that role?

10 A. I was the commander of the Second Brigade
11 Combat Team, Tenth Mountain Division.

12 Q. And how long were you the brigade commander of
13 210 Mountain?

14 A. About 41 months.

15 Q. When did you assume command and when did you
16 leave command?

17 A. I took command in December of 2007 and I took,
18 I left command in late spring of 2011.

19 Q. Sir, what positions did you hold before
20 becoming the 210 Mountain commander?

21 A. Prior to that I was the deputy commander for

1 the operations group at the joint grades training center
2 at Fort Polk, Louisiana. I was at the Army War College
3 for a year before that. And I was the commander of the
4 First Battalion, 14th Infantry prior to that.

5 Q. And sir, from your time at the JRTC, what were
6 your responsibilities there?

7 A. Essentially I assisted the commander of
8 operations group in all facets of his duties which
9 primarily focused on providing coaching and mentoring to
10 brigade commanders and their staffs and battalion
11 commanders and their staffs for the rotational unit as
12 they came through.

13 Q. Sir, what's the operations group at the JRC,
14 were they in charge of all the observer controllers?

15 A. Yes. That was the purpose of the operations
16 group was to run all of the OC teams during their
17 rotational cycles.

18 Q. Sir, as the deputy commander for the COG, were
19 you also an observer controller?

20 A. Yes.

21 Q. And who did you observe and control?

1 A. For the most part I focused on the brigade
2 commanders and their staffs, and to some extent the
3 battalion commanders.

4 Q. How many brigades rotated through while you
5 were fulfilling the role of an observer controller?

6 A. Ten, which is the standard for any given year
7 for a CTC.

8 Q. And, sir, what is your branch in the Army?

9 A. I'm an infantryman.

10 Q. And how long have you been an infantryman?

11 A. Twenty-seven years.

12 Q. Sir, when did you first arrive at Fort Drum?

13 A. I arrived there in the fall, September of
14 2007.

15 Q. And again, sir, when did you take command of
16 your brigade?

17 A. In December of the same year, 2007.

18 Q. And, sir, when you took command of 210
19 Mountain, when did, at that time when had the brigade
20 last deployed?

21 A. They had just returned from a 15 month

1 deployment just before Thanksgiving of that same year.

2 Q. And when you took command, sir, what was the
3 brigade mission and garrison?

4 A. When I took command we went through about a
5 six month reset, reorganization time period, and then
6 that summer we assumed the global response force mission
7 for the Army.

8 Q. And, sir, what is the global response force
9 mission?

10 A. At any given time the Army's got one brigade
11 combat team designated to be on a short string, if you
12 will, short notice deployment to any unexpected hot spots
13 that may arise anyplace in the world.

14 Q. And, sir, how many brigades are designated
15 with that global force response team?

16 A. At any given time, one.

17 Q. And what were the brigade's responsibilities
18 in regard to the global response force mission?

19 A. It was to stay in a trained status both with
20 respect to personnel manning, equipment, and then the
21 unit proficiency, training proficiency, and then be able

1 to respond, as I mentioned, on short notice based on
2 indications and warnings to any kind of an operation,
3 from humanitarian assistance to full combat operations.

4 Q. And, sir, when did the brigade transition into
5 preparing for a future deployment, approximately?

6 A. About a year after that, so 2008, yeah, summer
7 of '08.

8 Q. Sir, have you ever met PFC Manning? I'm
9 sorry, sir. Just before that.

10 A. Sure.

11 Q. You arrived when to 210 Mountain?

12 A. I took command in December of 2008.

13 Q. Okay, sir. And then when did --

14 A. So, I'm sorry. You asked me about the time
15 line. So summer of 2009 would have been when we started
16 our transition from that mission towards focus on
17 deployment.

18 Q. And what was that focus in the summer of 2009?

19 A. Initially Afghanistan.

20 Q. Okay, sir. And what did it change to?

21 A. To Iraq.

1 Q. Sir, have you ever met PFC Manning?

2 A. Excuse me. Yes, I have.

3 Q. And when was, when about was the first time
4 you met PFC Manning?

5 A. It was sometime during the time period we were
6 on the global response force mission.

7 Q. And what -- and how did you meet him?

8 A. As part of our maintaining readiness for that
9 mission we would do weekly staff updates to myself and
10 the battalion commanders focusing on different global hot
11 spots, if you will, or regional areas to maintain our
12 situational awareness and understanding. And as part of
13 that, PFC Manning gave part of the intel update during a
14 few of those weekly updates.

15 Q. Sir, was it common for a junior enlisted
16 soldier to be briefing the commander during staff updates
17 like that?

18 A. No, not really.

19 Q. So why in the S2 section did that happen?

20 A. I believe because of the S2 approach as part
21 of junior soldier and leader development was to have them

1 prepare for and conduct those briefings as part of their
2 professional development.

3 Q. And, sir, did you deploy as the brigade
4 commander of 210 Mountain?

5 A. Yes.

6 Q. And was that your first -- when was that
7 deployment?

8 A. That was from the fall of 2009 to the summer
9 of 2010.

10 Q. Sir, was that your first deployment?

11 A. No.

12 Q. How many deployments have you had in your past
13 27 years?

14 A. Four.

15 Q. Could you briefly describe those, please?

16 A. I had two combat deployments, one as a brigade
17 commander, 210, to Iraq; another 14 month deployment as a
18 battalion task force commander, also to Iraq. And then
19 two other operational deployments to the Balkans.

20 Q. I'm sorry, sir, you just answered this, the
21 length of the deployment.

1 What was the brigade's area of responsibility
2 to Iraq when 210 deployed?

3 A. We were responsible for all of eastern Baghdad
4 and the province to the east of Baghdad.

5 Q. And, sir, when your brigade deployed, what
6 division, what U.S. division did you fall under in Iraq?

7 A. U.S. Division Center.

8 Q. And what, during your deployment, sir, what
9 actual combat division headquarters fulfilled or were the
10 USDC?

11 A. I got you. Initially it was the First Cav
12 Division for about the first roughly three months, and
13 then First Armored Division after that.

14 Q. Sir, going back to the area of responsibility
15 of your brigade, how would you describe or could you
16 please describe for the court the size of 210 Mountain's
17 AOR within Iraq?

18 A. I think it was roughly about 500 square
19 kilometers or so. It was a pretty big AOR for a brigade
20 combat team.

21 Q. And what were the primary FOBs, COBs, JSSs in

1 your AOR?

2 A. The brigade was dispersed across about 17 or
3 18 different size combat outposts, joint security
4 stations and forward operating bases. The two primary
5 brigade outposts were FOB Hammer, which was outside the
6 city and Joint Security Station Loyalty in the city. So
7 the brigade main was out at Hammer and my forward command
8 post was at Loyalty.

9 Each battalion had their outpost and so I had
10 two maneuver battalions in the city itself and two
11 maneuver battalions outside the city.

12 In the city, in addition to those two
13 battalion locations, we had about seven, about seven
14 company platoon sized outposts dispersed throughout the
15 area from Sadr City, possibly south to Savniah, and then
16 out to Radi and the outer area we had a platoon.

17 Q. Sir, where was your brigade headquarters?

18 A. The main headquarters was at FOB Hammer.

19 Q. And where was the majority of your brigade
20 staff located?

21 A. Most of the staff was at Hammer with the main,

1 and then a small staff forward at JSS Loyalty with the
2 forward CP.

3 Q. And, sir, how far was FOB Hammer from Baghdad?

4 A. Probably about 60 kilometers.

5 Q. Sir, how long had the brigade headquarters
6 building been located at FOB Hammer by the time 210 took
7 over?

8 A. It was just established there. As part of our
9 transition with the unit we replaced, we had agreed and
10 arranged that the brigade main would move out of Loyalty
11 out to Hammer, be established during the transition, our
12 brigade would fall in on it, and that was done as part of
13 the condition setting to reduce the footprint of U.S.
14 forces inside the city.

15 Q. Sir, could you please briefly describe for the
16 court what were the key over-arching tasks of your
17 brigade for your deployment?

18 A. Sure. So we were there for the last OIF
19 mission and the transition to Operation New Dawn, New
20 Dawn being the drawdown of forces in theater, the
21 response drawdown. So we had a twofold mission as we saw

1 it, as I saw it.

2 First, it was to build capacity in the Iraqi
3 security forces and simultaneously create enough
4 stability amongst the population to insure that the
5 threats that were left when we pulled out would be
6 manageable by the Iraqi security forces. And then with
7 that accomplished, make a transition to the responsible
8 drawdown of our forces in theater and make a transition
9 to operation New Dawn.

10 Q. And, sir, in a general and in an unclassified
11 manner, what was the general nature of the threat against
12 the brigade in Iraq at the time?

13 A. There were certainly still a threat there.
14 Not quite the volume that I had experienced in the
15 previous deployment, but we were, for example, still
16 taking indirect fire attacks within the city on a regular
17 basis, you know, several per week, both in and outside
18 the city, still hitting IEDs roughly on a daily basis or
19 every couple days or so, and periodic direct fire
20 attacks.

21 Q. Sir, I'd like to now focus or have you focus

1 on the first of the major missions you just spoke about,
2 the training of Iraqis. For that mission, sir, what was
3 the main effort for your brigade staff?

4 A. For the staff, the focus was on help with
5 partnering with our Iraqi partners and helping them build
6 their staff capacity. That is, the planning and
7 synchronization oversight of their operations. We were
8 partnered with two Iraqi divisions, First Federal Police
9 and the Ninth Iraqi Army, and also with a core level or
10 equivalent headquarters, the Rasafa command three star
11 headquarters in eastern Baghdad. So we worked with them
12 on their skills of military decision making process,
13 intelligent preparation of battle field, and simple
14 operations in time and space. So for my staff that's
15 what their decisive action was.

16 Q. Now, sir, was that the decisive action for
17 your staff while they were also working as your staff?

18 A. Absolutely.

19 Q. And how did that occur, sir?

20 A. Well, so they spent, the staff principals
21 spent most of their time partnered with their

1 counterparts on those three different headquarters, so
2 you can imagine that was a pretty time intensive piece.
3 So most of their daytime operation were with their staff
4 counterpart. And then the routine tasks and actions that
5 were required to keep the brigade running, if you will,
6 were done at night, as well as other staff planning and
7 actions that took a little bit more time and
8 uninterrupted concentration.

9 Q. Sir, how many soldiers did you have in your
10 brigade?

11 A. We had about 4,000 deployed soldiers.

12 Q. And how many Iraqis was the brigade partnered
13 up with to train?

14 A. I'm going to estimate about 10,000 or so.

15 Q. Sir, now I'd like to ask you a few questions
16 about what you earlier testified about the second
17 mission, the responsible drawdown. What did you mean by
18 the responsible drawdown of your brigade?

19 A. Well, responsible is the keyword, that we
20 wanted to hand over the fight to a capable Iraqi force,
21 and that the transition period needed to be smooth,

1 seamless and transparent to the population, meaning no
2 drop in security while it was occurring so that their
3 day-to-day lives went on uninterrupted without major
4 change or turmoil.

5 So to do that, it's a pretty complex
6 operation with a number of simultaneous actions happening
7 together.

8 First, we had to physically hand over the 18
9 or so outposts that we owned to our Iraqi counterparts,
10 if they wanted them, and that was both a physical
11 property turnover and a physical ownership that had to be
12 overseen by the Iraqi minister of the interior. It's a
13 very deliberate process.

14 Simultaneous with that and probably more
15 important was transfer of authority for security of those
16 areas surrounding those outposts to our Iraqi
17 counterparts. Part of that was a strategic
18 communications effort to broadcast that across the local
19 area so that the population knew this was occurring. And
20 there's a large ceremonial piece that went with that to
21 make sure it was known publicly and that they could get

1 credit or could get the credit they were due for taking
2 that ownership very celebrated by the Iraqi people in the
3 local areas.

4 While that was happening, we also had to turn
5 in all the theater-owned equipment that had built up over
6 the past ten years of having been in country, turned that
7 into central locations for eventual shipment back to
8 Kuwait, and eventual shipment back to the continental
9 U.S.

10 Along with that, we had to prepare our own
11 equipment for shipping back to Fort Drum and other places
12 that attachments came from and the planning of our normal
13 redeployment activities that any other unit now would do.

14 Q. Sir, when was the decision point on when to
15 shift your main focus and effort to the responsible
16 drawdown from training Iraqis?

17 A. Right. We had a decision point, the elections
18 were held late February, early March.

19 Q. I'm sorry, sir. What elections?

20 A. The Iraqi government elections were held in
21 that time period and we had a decision point a few weeks

1 after that to determine whether or not we had met the
2 conditions, meaning Iraqi security forces competent
3 enough and population stable enough to make the
4 transition in priority of work from those two tasks to
5 the drawdown of our forces in theater.

6 Q. Sir, did the drawdown mission begin concurrent
7 with the training mission?

8 A. Yes, sir.

9 Q. And was that -- what was the focus of your
10 brigade staff during this time for the whole deployment
11 then?

12 A. It remained on capacity capability for those
13 three staffs that I mentioned and their Iraqi
14 counterparts.

15 Q. And, sir, which BCT was the first to drawdown
16 in Iraq?

17 A. Our brigade was the first brigade to begin
18 responsible drawdown and initiate the transition to
19 Operation New Dawn.

20 Q. Sir, what major challenges did the brigade
21 face with such a diverse mission?

1 A. One was just the diversity of the mission
2 required a lot of intellectual energy going in a lot of
3 different directions. There was the physical
4 dispersement of the force which was a challenge, and we
5 had a challenge with our communications network being
6 able to physically cover the territory that we were
7 operating in. So we pretty much had the combo network
8 pretty much stretched to its limits with the duties we
9 had to do.

10 Q. And, sir, with reference to communication,
11 what type types of problems did you have?

12 A. The biggest ones for myself and support unit
13 was connectivity, especially during key times like
14 update, brigade to division, brigade to battalions, and
15 laterally.

16 Q. And, sir, when you talk about networks and
17 communication, what networks and types of communications
18 are you talking about?

19 A. My late brain. I was talking about all combo,
20 whether it be FM communications, secure voice, Internet,
21 email traffic, all secure networks, VTCs,

1 teleconferences, all of it.

2 Q. Sir, did that include the use or having
3 connectivity of SIPRNET?

4 A. Yes.

5 Q. And how important, if at all, sir, was SIPRNET
6 to the brigade's mission?

7 A. It was critical.

8 Q. Why, sir?

9 A. SIPRNET is the primary means of communicating
10 in theater, not just for our brigade, but for everybody.
11 So almost everything we do or did was over SIPR.

12 Q. SIPR, how often did you personally use SIPRNET
13 in theater?

14 A. About all the time, every day.

15 Q. How often did your brigade staff use SIPRNET
16 in theater?

17 A. The same, all the time.

18 Q. What about junior staff?

19 A. Same.

20 Q. Sir, did most junior staff have NIPR computers
21 with access?

1 A. No, not directly. If they did, it would be
2 one computer per X number of soldiers that they could get
3 to if they needed to.

4 Q. And why is that, sir?

5 A. As I mentioned, really no need. I mean
6 99.99999 percent of activity was done on SIPR side, so
7 that was, SIPR was as normal in theater as NIPR is in the
8 garrison.

9 Q. Sir, how often did your staff leave FOB
10 Hammer?

11 A. Primary staff, the principals, DV1, DS2, DS3,
12 DS4 had a regular basis out of a course of a week to do
13 their engagements with their Iraqi counterparts.

14 Q. And then how often then did junior soldiers on
15 your command leave FOB Hammer?

16 A. Seldom to never.

17 Q. Sir, what concerns did you have for soldiers
18 who never left the FOB?

19 A. Getting stuck in what we would call a Fobbit
20 rut.

21 Q. What do you mean by that, sir?

1 A. Well, I mean if you're on a FOB and you're
2 never leaving the wire, then things -- and your job is
3 tied to a computer screen on a daily basis, you know,
4 your mental edge or intellectual energy, if you will, can
5 kind of start to get greyed out. So getting stuck in a
6 rut, in a routine, and getting stuck in a mundane, you
7 know, battle rhythm could cause you to lose focus,
8 concentration and, you know, that alertness that goes
9 with staying on your game.

10 Q. Sir, when you were at FOB Hammer, did you know
11 that soldiers had played music, movies and games on
12 SIPRNET?

13 A. I had an awareness in the periphery of my mind
14 that folks were listening to music and that kind of thing
15 on systems.

16 Q. And, sir, since it was, you said awareness as
17 you said in the periphery of your mind, why was having
18 movies, music and games on SIPRNET not a concern for you?

19 A. There wasn't anything about that that had
20 anything to do with any kind of impact on the mission at
21 hand and the operational effectiveness of those soldiers

1 doing their day-to-day jobs.

2 Q. Was there a benefit, sir, to having that on
3 SIPRNET?

4 A. Well, I would say that there's a benefit to
5 anybody who's got a job that keeps them in one work space
6 in a cubicle working on a computer to have something like
7 music, periodic interruption of a game, whether it be
8 solitaire or whatever, to a break, to break the monotony
9 of what they're doing as part of their normal operations.

10 Not unlike a college student studying for
11 exams may be listening to music while they're studying,
12 or if you go in the dentist office and you're getting
13 your teeth worked on the hygienist has a radio playing in
14 the backdrop while they're doing their job. I think that
15 there's some value probably to that.

16 Q. Sir, at any point during your brigade's
17 deployment, did the amount of information on the SIPRNET,
18 the amount become a problem?

19 A. We believed so, yes.

20 Q. And what was the problem, sir?

21 A. Well, I don't remember the exact timeframe,

1 probably January or so, we were having these problems
2 maintaining connectivity. For example, during the
3 division update briefs when all the brigade commanders
4 were on the net communicating their analysis of what had
5 transpired the previous week with the division commander
6 and we would frequently get dropped off the net during
7 those time periods.

8 So I had turned to my staff and said we got
9 to figure out why this is happening and what can we do to
10 get this working right. We didn't want to have
11 interruptions during that time period, or when UAV feeds
12 were coming in during specific operations or that kind of
13 thing.

14 When they came back to me, part of the issue
15 was we had a bandwidth management challenge that was part
16 of the cause for this, and so part of the problem with
17 that, as I understood it, was too much stuff on the net
18 at any given time, and that was causing the drops that
19 were occurring as it was explained to me. So that was a
20 problem that we were faced with.

21 Q. So, sir, what I guess remedial measures did

1 you direct in order to fix that problem?

2 A. Well, based on the recommendations, I asked
3 the staff what could we do. Some of those things were
4 limiting access during key times, so putting in protocols
5 that would say, hey, only these things can be running
6 during this time to maintain minimal connectivity and
7 allow for the main event like an update brief with the CG
8 or UAV feed during a key operation to not get disrupted.

9 Taking a look at systems that weren't being
10 used very frequently and taking them off the net
11 permanently.

12 Eliminating generic user names like technical
13 operations center battle captain so that not anybody
14 could jump in there with that user word and use it for
15 something other than its designed intent for the mission.
16 Things of that nature.

17 Q. Sir, was any of these remedial measures that
18 you ordered, were any of them done for security reasons?

19 A. No. We were looking at this from a network
20 connectivity standpoint, that was the problem at hand.

21 Q. And, sir, are you familiar with the program

1 WGet?

2 A. I am familiar with it now.

3 Q. What do you mean by that, sir?

4 A. I wasn't aware of it at all during our time in
5 theater. Since this entire security breach occurred and
6 learning about that as part of in the aftermath I learned
7 what it is.

8 Q. So because of this case we're here today for,
9 sir, you learned about it?

10 A. Right.

11 Q. Sir, are you familiar with mIRC chat?

12 A. I am.

13 Q. And what is mIRC chat?

14 A. It's a system that we've been using and we
15 were using at the time that allows collaboration within a
16 network, in our case, between division brigade and
17 battalion staffs, so that you can communicate vertically
18 and horizontally. Significant to us simultaneously
19 because that enables collaboration which is at the heart
20 of mission command.

21 Q. Sir, did your staff use mIRC chat deployed in

1 Iraq?

2 A. Yes.

3 Q. Did the division use mIRC chat?

4 A. Yes.

5 Q. Sir, what was the benefit of mIRC chat?

6 A. Like I said, it allowed collaboration.

7 There's two reasons why that's so important. In its most
8 immediate need, by way of example, a combat patrol hits
9 an IED, makes an IED strike, so now all the react to
10 contact rules go into play. Without mIRC chat that
11 report of the IED hit could come up in a single chapel,
12 let's say to a platoon to battalion to brigade to
13 division.

14 If they need a med-evac, that same request
15 goes up those single channels. If they need reinforcing
16 fire, attack aviation or something like that, same thing,
17 that request goes up through those channels, gets
18 approved or cleared at each level, and then it comes back
19 down. If they need an EOD team, same thing. That all
20 takes time. And when you're in a fight, time is
21 critical.

1 With chat, that information goes to everybody
2 same time. So the division staff knows, battalion,
3 brigade, battalion staff, commanders are aware if they're
4 tracking and so the request for med-evac goes through
5 instantaneously. EOD goes right away. Plus from a
6 commander standpoint everybody's got situational
7 awareness.

8 So other combat patrols in the area, if
9 they've got to alert around it, not get bogged down in
10 that bottleneck, they can do it. If there's a quick
11 reaction force that need to be put on alert or get
12 launched it can all happen in a fraction of the time it
13 would have taken without a system like mIRC chat.

14 Q. Sir, when did your brigade start using mIRC
15 chat?

16 A. At the time we got on the ground.

17 Q. How do you know that, sir?

18 A. We picked it up from the unit that we were
19 replacing about part of our relief.

20 Q. And what unit was that?

21 A. Third Brigade of the 82nd.

1 Q. And why did you use it just because 382 was
2 using it?

3 A. Well, it wasn't just because 382 was using it.
4 It really was that was the system that was being used in
5 theater in U.S. Division Center at the time. So to be
6 compatible with everybody else in theater, you're going
7 to use the systems at play.

8 Q. So now I'd like to ask you a few questions
9 about your brigade headquarters and the TOC and the S2
10 SCIF area. Where was your office located at FOB Hammer?

11 A. My office itself was on FOB Hammer inside the
12 brigade headquarters.

13 Q. And, sir, could you please describe the
14 building or tent? What type of infrastructure or --

15 A. Yeah. So we had hard stand, hard structure
16 building inside the FOB that was the brigade
17 headquarters.

18 Q. And, sir, where was the S2 SCIF office
19 located?

20 A. Same building with the brigade headquarters,
21 so my office, the brigade tactical operations center

1 itself and all the staff functions were all inside that
2 one building.

3 Q. And, sir, could you briefly describe for the
4 court how one would walk in from the front of your
5 brigade headquarters and get to the SCIF?

6 A. Sure. So -- excuse me. You'd come in the
7 main entrance which was pretty much center mass of the
8 building. The first thing you'd come to was a small card
9 stand if you will.

10 THE COURT: I'm sorry.

11 THE WITNESS: Like a desk about the size of
12 what I'm sitting in front of you which is where we had a
13 spot for a security post.

14 BY MR. von ELTEN:

15 Q. Sir, were there guards that were manning that
16 post?

17 A. Only at night.

18 Q. And why, sir?

19 A. One, that was low personnel manning time
20 period, so there wasn't as many people in the building to
21 check who was coming in and out. Because of the battle

1 rhythm of daytime operations that I talked about, the
2 volume of folks that were around to see who was coming in
3 and out was ample, we thought, to check folks that didn't
4 have normal day-to-day business inside the headquarters.

5 Q. Sir, for someone to walk in when there was a
6 guard, was there a challenge password in place? How did
7 you verify to get past the guards?

8 A. Good to use the analogy of challenging
9 passwords. Just like you would do for regular
10 challenging passwords, if the guard recognized the person
11 that was there and recognized that they were part of the
12 organization, there was no challenge, just visual
13 identification, you're good to go.

14 Q. When you say the organization, sir, is it your
15 whole brigade, is it your staff?

16 A. The staff or anybody who had normal duties
17 within there or reason to be there like a battalion
18 commander, battalion sergeant major, folks like that. If
19 not, then they asked them what they needed and where did
20 they need to do go, and then they'd get somebody from the
21 appropriate staff and they'd come in and out.

1 Q. I interrupted you, sir, I apologize. You were
2 talking about once you walked past the guard station.

3 A. Yeah. The tactical operations center was just
4 past that where the operation sergeant major and the key
5 folks were. And then there was a hallway where the rest
6 of the staff agencies were located. As I recall, the
7 last offices on that particular hallway was the brigade
8 S2 shop.

9 Q. Now, sir, when you would walk up to the
10 brigade S2 shop, could you just walk in the door?

11 A. No. It was cypher lock secured and you had to
12 have access to the cypher lock to get in, into the 2
13 shop.

14 Q. And did you have access to that?

15 A. I did not.

16 Q. And what office of individuals were the ones
17 that had access?

18 A. The S2.

19 Q. And was an individual allowed to go into the
20 S2 office without an escort?

21 A. Not to my knowledge, no.

1 Q. Sir, when did you first find out about PFC
2 Manning's at the time alleged misconduct?

3 A. I don't remember the date, but the way it came
4 about to me was I was coming back from dinner or
5 something like that one evening and I was approached by
6 either my XO or my DCO and they told me that we had been
7 instructed to secure Manning and his computer and he was
8 being, agencies were coming to pick him up and take him
9 away.

10 Q. And, sir, what was your understanding of the
11 nature of the misconduct at that time?

12 A. At that time I didn't have any idea.

13 Q. And then what was your understanding once you
14 were briefed and understood what it was?

15 A. I had a general understanding that he had
16 pulled classified information from --

17 MR. COOMBS: Objection, Your Honor.

18 THE COURT: Yes.

19 MR. COOMBS: Hearsay and relevance.

20 THE COURT: What is the non-hearsay purpose?

21 MR. FEIN: Well, the effect on listener, Your

1 Honor.

2 THE COURT: Where are you going with that?

3 MR. FEIN: Ma'am, it goes ultimately to
4 proving, providing facts to prove it was both prejudicial
5 to order and service discredited, some of the acts that
6 have not been pled guilty to.

7 THE COURT: Why don't you just say after you
8 were briefed in your questions. Sustained.

9 MR. COOMBS: Your Honor, just --

10 THE COURT: Sustained on hearsay, not on
11 relevance.

12 MR. COOMBS: Yes, Your Honor. Just for the
13 defense purpose on the relevance, we believe that the
14 relevant conduct for prejudicial order or discipline
15 would be the direct acts, not any government acts after
16 that. So I'm not for sure where Major Fein will be
17 going, but the direct acts would be relevant under 134,
18 under that, so --

19 THE COURT: Why don't we let him go and get
20 there, and if it's not for a proper purpose I can
21 disregard it.

1 MR. COOMBS: Yes, Your Honor.

2 THE COURT: Go ahead.

3 BY MR. FEIN:

4 Q. Sir, how did you react when you first found
5 out about PFC Manning's at the time alleged misconduct?

6 A. I was stunned.

7 Q. Why, sir?

8 A. The last thing I anticipated was an internal
9 security breach from one of our own.

10 Q. Sir, were you ever in a meeting with your
11 brigade staff that the alleged misconduct was discussed?

12 A. Yes.

13 Q. And what was your reaction based off of those
14 discussions during your brigade staff meetings?

15 A. After I got past my initial reaction, I pulled
16 the staff together because I wanted to do an internal
17 look to determine what if anything we had or had not done
18 that may have led to the ability for this to occur, so we
19 could do some self correcting and move forward if we
20 needed to.

21 As part of that I described from my

1 perspective what I thought had happened. My read of my
2 staff at that time was it was like a funeral-like
3 atmosphere fell over that crowd, that's the best way I
4 can describe it. They were angry, sad, grief,
5 frustrated, all at the same time. That's how I would
6 describe it.

7 Q. Sir, before you learned of PFC Manning's at
8 the time alleged misconduct, how would you describe the
9 overall morale of your staff and brigade?

10 A. So probably one of the highest points I had
11 been on in my entire command duration, and that's, that's
12 because we had really hit all of our objectives in our
13 conditions for meeting the mission requirements. You had
14 asked and I had mentioned that we were the PCT identified
15 to begin responsible drawdown. That didn't happen by
16 accident. A lot of work went into achieving those
17 objectives and being able to brief General Odero that we
18 were ready. That was in large part through the
19 achievements of the staff and the subordinate units. So
20 they were feeling very good about that.

21 The Iraqi population was cooperating with

1 each other, things were moving in the right direction
2 with their own unity efforts. Security forces were
3 reaching a high point in their own performance. All
4 those things were occurring. And then out of the blue we
5 had this incident occur.

6 Q. So, sir, once you and the brigade staff
7 learned of PFC Manning's then alleged misconduct, how
8 would you describe the morale of the brigade?

9 A. It took a hit. We had all those good things
10 going and, to put it in context, you know, this was the
11 beginning of the drawdown, so I had a large number of,
12 probably 50 percent of the force that had anywhere from
13 two to six deployments in theater before that, so what
14 they were seeing is the fruits of their labor over the
15 past ten years coming to fruition and feeling pretty good
16 about it. So all that energy and effort and sacrifice
17 that had gone into it was coming to a completion. And
18 then we had this incident occur, which the unit
19 collectively felt was like a blemish on its otherwise
20 pretty stalwart record.

21 Not to mention what it does to trust to a

1 large degree in a formation.

2 Q. What do you mean by that, sir?

3 A. Well, earlier I made an analogy to security
4 breach. In this case it was cyber security. But to my
5 infantryman's way of looking at things, trust is critical
6 to, it's at the foundation of everything we do. So if
7 you're in a combat patrol, you got a lead helmet with
8 front security, you got a trail helmet with trail
9 security, and you got left and right flank security.
10 Every soldier in that formation knows that the other
11 soldier's got their peace and security. They know it in
12 their blood and in their, in the fiber of their body.
13 And that trust, that that's true, is crucial to them
14 staying focused on their part of the security piece. It
15 is interwoven and relies upon each other, just that
16 mutual knowledge that I got you, you got me. That's how
17 we roll.

18 If any one of those violates that, now that
19 soldier with the lead security is looking to his left and
20 going is there a gap in security over here? I'm taking
21 my eyes off my job, I'm putting it over here. And the

1 whole thing starts to unravel. And so that's a simple
2 example, but the analogy is true in every echelon of
3 command. That notion is what hit at the morale and for
4 at least a while the operational effectiveness of the
5 formation.

6 MR. FEIN: Thank you, sir.

7 Your Honor, no further questions.

8 THE COURT: Cross examination.

9 MR. COOMBS: Yes, Your Honor. If we could,
10 could we have a ten minute comfort break?

11 THE COURT: All right. Why don't we make it
12 15? We'll be in recess until five minutes after 12.

13 Once again, during the recess, please don't
14 discuss your testimony or knowledge of the case with
15 anyone.

16 THE WITNESS: Yes, ma'am.

17 (BRIEF RECESS.)

18 THE COURT: Court is called to order. Let
19 the record reflect all parties present when the court
20 last recessed are again present in court. The witness is
21 on the witness stand and Mr. Coombs is at the lectern.

1 MR. COOMBS: Thank you, ma'am.

2 CROSS EXAMINATION

3 BY MR. COOMBS:

4 Q. Colonel Miller, I want to begin by talking
5 about the connectivity problems that you had during the
6 deployment, okay?

7 A. Okay.

8 Q. Now, during the deployment you started having
9 connectivity problems with your weekly updates to Major
10 General Wolfe, is that correct?

11 A. Yes.

12 Q. And Major General Wolfe was the division
13 commander?

14 A. Correct.

15 Q. And it was during this time you found out that
16 the loss of connectivity was due to unauthorized data on
17 the system?

18 A. No.

19 Q. Is that what your testimony is right now?

20 A. That I understood that there was a volume of
21 stuff on the network that was causing part of the

1 problem, so the data, authorized or unauthorized, was
2 part of that problem.

3 Q. All right. So --

4 A. So all I'm saying it wasn't solely because of
5 that.

6 Q. All right. So let me make sure I understand
7 your answer. During this time period when you were
8 having connectivity problems, you found out that part of
9 the problem was due to unauthorized data being on the
10 system?

11 A. Yeah, that it was contributing to the volume
12 of stuff that was on the system which was causing the
13 problem as I understood.

14 Q. And specifically it was unauthorized data?

15 A. Can you ask that again?

16 Q. Yes. Specifically when you were talking about
17 data, you were made aware that there was unauthorized
18 data on the system.

19 A. As part of the larger data problem. So, for
20 example, UAV feeds are authorized data flow. They take
21 huge chunks of bandwidth. So that was part of the

1 problem also.

2 Q. Right. But my question is you were
3 specifically told that there was unauthorized data on the
4 system?

5 A. Yes.

6 Q. And the person that basically addressed this
7 issue for you, this unauthorized data, was Captain
8 Cherpko?

9 A. Yes.

10 Q. And with regards to Captain Cherpko, it was
11 your opinion that he was the only person really in the S6
12 shop who had the skills necessary to fix this problem?

13 A. Yeah, he certainly had the most capability,
14 yeah.

15 Q. And, you know, something obviously that could
16 also have helped improve the connectivity problems that
17 you were having was the removal of unauthorized media,
18 correct?

19 A. Yes.

20 Q. So you could have, for example, insured that
21 movies, music, games, executable files, those things that

1 should not be on a SIPRNET system were removed?

2 A. Yes.

3 Q. Because they were taking up a lot of space?

4 A. I don't know how much space they took up.

5 Q. Did Captain Cherpko ever come to you to inform
6 you that unauthorized media was taking up a lot of space?

7 A. No.

8 Q. Did he ever inform you about the problem of
9 unauthorized media on the T drive?

10 A. No.

11 Q. So to your knowledge, Captain Cherpko never
12 came to you and said or through I guess who had been your
13 XO, sir, we've got unauthorized media on the T drive and
14 that's causing us a problem?

15 A. No. The XO, Brian Kerns, came to me with
16 here's what we found is lending itself to the problem
17 we're having.

18 Q. All right. So whether it be through Captain
19 Cherpko, Lieutenant Colonel Kerns, were you made aware
20 that there was unauthorized music, movies and games on
21 the shared drive?

1 A. Yes.

2 Q. And based upon being made aware of that, what
3 direction did you give?

4 A. I told them to clean it up as part of their
5 overall efforts to and other steps they were taking to
6 get the connectivity working again.

7 Q. And was it just the direction that you just
8 said there, to clean it up, or did you actually give
9 specific directions?

10 A. I didn't give specific guidance.

11 THE COURT: Can I interrupt you for a second?
12 You said you told them. Who is them?

13 THE WITNESS: So we had the XO, Brian Kerns
14 was the guy who I had shepherding this entire staff
15 effort because that's what he is, he's a chief of staff.
16 So I don't remember if Cherpko was in the room, who else
17 was present, maybe Brian, maybe Cherpko, maybe the
18 deputy, he may or may not have been present. But they
19 came back and essentially said these are the things we
20 see lending itself to the problem.

21 And we -- they had a recommendation for

1 clearing some of that up. It included getting rid of the
2 unauthorized media, it included, like I had mentioned,
3 some other measures like taking certain systems off and
4 adding to the protocols to control when things were being
5 accessed when. So I said, yeah, let's get after that.
6 And, again, I don't remember the exact laundry list of
7 recommendations they had, but I said, yes, let's do that.

8 Q. And when you gave the guidance to your staff
9 basically to correct the problem, did you ever receive
10 word back through your staff that the problem was
11 persistent, meaning that once it was removed it was
12 getting placed back on the T drive?

13 A. No, not that I recall, no.

14 Q. Did you ever get a requested brief back of
15 your staff of now that I gave you the guidance to go
16 correct it, come back to me by X date and tell me what
17 you did and what your results were?

18 A. No, I don't think so.

19 Q. With regards to the problem, once you're aware
20 of the problem, did the brigade ever conduct any training
21 on what type of media a soldier could and could not put

1 on the shared drive?

2 A. Not formalized.

3 Q. And what do you mean by that?

4 A. There wasn't a class with a sign-in roster or
5 that kind of thing.

6 Q. So was there any informal training done that
7 you're aware of to tell soldiers what they could and
8 could not put on the shared drive?

9 A. I wouldn't classify it as training. I believe
10 what happened was guidance was put out through staff
11 challenges of what had to be cleaned up.

12 Q. All right. And when you say you believe, was
13 that because you gave that directive or you just believe
14 that might have been done based upon your initial
15 directive of clean it up?

16 A. Because it was part of the initial guidance to
17 take action.

18 Q. Okay. Do you know whether or not at any time
19 during the deployment there was any sort of discussion on
20 executable files, files that you could put on the shared
21 drive or not?

1 A. No.

2 THE COURT: Does that mean you don't recall
3 or there was none?

4 THE WITNESS: Ask the question again, please.

5 MR. COOMBS: Yes.

6 BY MR. COOMBS:

7 Q. Do you know whether or not during the
8 deployment there was ever any training on what executable
9 files you could or could not place on the shared drive,
10 the T drive?

11 A. I don't know. I don't know that we were in
12 the business of putting files on drives, so --

13 Q. The T drive was the shared drive, right?

14 A. Right.

15 Q. And soldiers, any section could share, excuse
16 me, save stuff to the T drive?

17 A. Right.

18 Q. So do you know from the brigade standard
19 whether or not there was any training or guidance given
20 on executable files that you could or could not save on
21 the shared drive?

1 A. I don't know.

2 Q. Now, during the deployment, were you ever
3 informed that there was unauthorized media within the
4 T-SCIF?

5 A. No.

6 Q. Did you later learn that there was
7 unauthorized media in the T-SCIF?

8 A. No.

9 Q. So from your standpoint, even today I guess,
10 you didn't know whether or not there was unauthorized
11 media on your T-SCIF?

12 A. Well, actually today I can say no, not for
13 sure, I presume just part of the overall read that we had
14 unauthorized media, I didn't discount or include the
15 T-SCIF in the read, so I wasn't specifically aware of
16 anything in the T-SCIF.

17 Q. The reason why I ask is my understanding is
18 like when you go in to kind of like the TOC was and the
19 T-SCIF, the T-SCIF had a cypher lock, right?

20 A. Correct.

21 Q. So that was, would you agree with me, a much

1 more secure area than maybe the TOC because of the cypher
2 lock?

3 A. Access-wise, yeah.

4 Q. And also access-wise it was much more limited
5 as to who could go into the T-SCIF?

6 A. True.

7 Q. So you would want to be, I guess that's
8 because you're very concerned on who goes into the T-SCIF
9 and what happens in the T-SCIF?

10 A. Yep, certainly who goes in.

11 Q. And then also the information that you have in
12 the T-SCIF you're concerned about?

13 A. Yeah.

14 Q. So were you ever made aware that soldiers in
15 the T-SCIF had unauthorized media like movies, music and
16 games?

17 A. No.

18 Q. And when you talked about I guess the, in your
19 term it was the Fobbit where if you never go anywhere,
20 you kind of go a little stir crazy just being on the FOB,
21 was your --

1 THE COURT: Let the record reflect the
2 witness is nodding his head.

3 MR. COOMBS: I'm sorry. Thank you, ma'am.

4 BY MR. COOMBS:

5 Q. Was your guidance to combat that in the T-SCIF
6 you would allow music, movies and games on a SIPRNET
7 computer?

8 A. No.

9 Q. And if you were made aware of that, sir, would
10 you have put a stop to that practice?

11 A. I don't know. Not necessarily.

12 Q. And why not?

13 A. For the same reasons I just described, that I
14 thought there's some degree of benefit to those kind of
15 luxuries, if you want to call it that. I don't see
16 immediately as a layman the operational problem with
17 that.

18 Q. And if your S6, Captain Cherpko, came to you,
19 assistant S6 actually, came to you and said, sir, the
20 problem with that is the music, movies, games, or the
21 executable files are a security risk, they should not be

1 on the SIPRNET computer, if you received that guidance,
2 would you then not want to have that stuff on the SIPRNET
3 computer?

4 A. Yes. And or I would have wanted to peel that
5 onion further back and determine exactly what the nature
6 of the security risk is, and then decide whether or not I
7 wanted to challenge that and run a waiver on it through
8 the green chat channels to determine whether it was
9 really a risk or not. Because sometimes these risks --
10 the reason given for it's not authorized is because
11 there's a document that says this is not authorized and
12 therefore it's a risk.

13 What I always want to get to is why, not the
14 document, but what was the logic behind that being put in
15 that document so I can get to the root reason. Then we
16 can assess the root reason against what we're doing and
17 find if there really is a physical. But either way I
18 would want to run it on ground and get permission or not.

19 Q. If your S6 said, hey, this stuff is a security
20 risk because it opens up our network to outside intrusion
21 and you ran that to ground and that was true, then I

1 imagine you would not allow that in your T-SCIF?

2 A. Correct.

3 Q. And if the S6 said, hey, the same thing, that
4 this is a problem because it opens up our network to
5 outside individuals, and you ran that to ground and that
6 wasn't true, that was just an S6 being an S6 being too
7 concerned, but the reality was there was no problem, what
8 would you do in that situation, sir?

9 A. But it was still a policy or regulatory
10 unapproved?

11 Q. Yes, sir.

12 A. Then I would want to run it back up through
13 division to see if we couldn't get an exception, if there
14 was operational benefit that was worth the energy to do
15 that, then I may have wanted to look into it to see if we
16 could get a waiver.

17 Q. And did you ever do that, to your knowledge?

18 A. No.

19 Q. Ask for a waiver?

20 A. No, I did not.

21 Q. Would that apply and -- you talked about the

1 mIRC chat program, right? You're familiar with that,
2 sir?

3 A. Yes.

4 Q. And did you ever ask for a waiver to have the
5 mIRC chat program put on the DCGS-A computer at your S2
6 section?

7 A. No.

8 Q. Now, you talked about also having SIPRNET and
9 you used it all of the day, correct?

10 A. All the time, yeah.

11 Q. All the time. And my understanding also,
12 having been deployed, that SIPRNET becomes basically your
13 everyday computer that you're using, is that right?

14 A. I would agree with that, yeah.

15 Q. And that's how, you know, soldiers communicate
16 with one another and that's basically what they work on
17 on a daily basis, is that correct?

18 A. Yeah, it's like I described in my earlier
19 statement. To me the analogy would be it is as normal as
20 using the computers you're using here as part of this
21 process, just make them SIPR, same thing.

1 Q. And, sir, how many people do you remember, and
2 I'm not trying to give you like a hard number where
3 you're like, oh, 3,400, but what percentage of your
4 brigade do you think had access to SIPRNET?

5 A. I'm going to swag, 20 percent. What I'm
6 really thinking about is it's a really a breakdown.
7 Staffs had access. The preponderance of my force were
8 trigger pulling soldiers, most of those soldiers did not.
9 So company level, below, very, very little. Battalion
10 staff level functions, quite a bit.

11 Q. And when you're talking the battalion staff,
12 the people who were probably for the most part the
13 Fobbits, correct?

14 A. Right.

15 Q. What percentage of the battalion staff and
16 brigade staff do you believe had access to SIPRNET?

17 A. The majority.

18 Q. And with regards to SIPRNET, from your
19 knowledge, did you know that you could go to the
20 Net-Centric Diplomacy database on SIPRNET?

21 A. Say that again.

1 Q. Did you know that you could go to the
2 Net-Centric Diplomacy database on SIPRNET?

3 A. No, I didn't.

4 Q. Do you recall ever asking your S2 at the time,
5 Captain Lynn, to start incorporating guidance,
6 information from the cables into their work products?

7 A. No.

8 Q. With regards to the SIPRNET, do you know if
9 your brigade conducted any training on where a soldier
10 could or could not go on the SIPRNET?

11 A. No, I do not.

12 Q. Do you know if your brigade put out any
13 restrictions on what a soldier could or could not look at
14 on the SIPRNET?

15 A. No.

16 Q. When we talk about kind of the Fobbit
17 mentality and using basically SIPRNET as your everyday
18 Internet, if a soldier wanted to, if they were just
19 otherwise kind of not doing anything and they just wanted
20 to surf the SIPRNET, was that something that your brigade
21 put a restriction on?

1 A. Not that I recall.

2 Q. So if I were Private Coombs and I'm on my
3 SIPRNET machine and you walked by and you said, Private
4 Coombs, what are you up to, and I say, hey, sir, nothing,
5 it's kind of a slow day, I'm just surfing the SIPRNET,
6 that would not be a problem in your eyes as a brigade
7 commander?

8 A. It wouldn't register as a problem to me.

9 Q. Now, with regards to downloading stuff from
10 the SIPRNET, do you know if your brigade put out any
11 guidance or restrictions on what you could or could not
12 download from the SIPRNET?

13 A. Download to?

14 Q. To a CD, say, for example, that you
15 appropriately labeled, or down to your SIPRNET machine.

16 A. Yeah. So I don't recall any guidance on what
17 could be downloaded to your machine. I don't remember
18 when the guidance came out for not downloading to
19 removable drives, whether that was before or after this
20 time period, but that wasn't brigade guidance, that was
21 Army guidance. I don't remember whether that fell within

1 this, this timeframe or not. But downloading at some
2 point, the Army said we're not doing that any more.

3 Q. Sir, from your experience, and I know you were
4 on SIPRNET, do you recall ever saving something that you
5 got from SIPRNET on to your computer?

6 A. I don't have a specific memory, but I probably
7 did.

8 Q. And do you know from the brigade level whether
9 or not there was any sort of restriction in the manner in
10 which you saved information? If you decided I want to
11 save something from the SIPRNET that there was a
12 restriction on the manner in saving that information?

13 A. Manner like how you click on something and
14 select save and --

15 Q. Right.

16 A. No.

17 Q. Now, I want to ask you a few questions about
18 PFC Manning. You talked about the fact that you met him
19 before, is that correct, sir?

20 A. As I described earlier, yeah.

21 Q. And that was basically him conducting a brief

1 in front of you?

2 A. And the other staff and some commanders, yes.

3 Q. And, sir, was that before the deployment or
4 was that during the deployment?

5 A. Before.

6 Q. And based upon what you saw, do you recall
7 saying you thought he was a sharp briefer?

8 A. Yes.

9 Q. And even though you thought he was a sharp
10 briefer, you also, do you recall saying that you believed
11 that he wasn't experienced at analysis?

12 A. I don't recall saying that, but --

13 Q. Would anything help refresh your memory?

14 A. Well, if in the context of the briefings, the
15 briefings weren't really about analysis, they're about
16 here's the situation that's taking place, so there wasn't
17 a lot of analysis that would go into it. So I may have
18 said that, but, yeah.

19 Q. And it's okay because this was a long time
20 ago, you know. Do you recall saying he was not
21 experienced at analysis, but he was fine in making

1 presentations?

2 A. Yes.

3 Q. Okay. And even though he wasn't experienced
4 in analysis, you would agree with me that that might be
5 just because he was a junior enlisted soldier at that
6 time?

7 A. Sure.

8 Q. He was a young soldier?

9 A. Yeah.

10 MR. COOMBS: Sir, thank you. I don't have
11 any further questions for you.

12 THE WITNESS: Okay.

13 THE COURT: Redirect.

14 MR. FEIN: May I have a moment, Your Honor?

15 THE COURT: Yes.

16 MR. FEIN: Yes, ma'am.

17 THE COURT: Go ahead.

18 REDIRECT EXAMINATION

19 BY MR. FEIN:

20 Q. Sir, do you know what an executable file is?

21 A. Sort of.

1 Q. Okay, sir. What is it, in your knowledge of
2 it, sir?

3 A. It's a file that provides some sort of
4 function for off the hard drive.

5 THE COURT: I'm sorry. Can you say that one
6 more time?

7 THE WITNESS: It provides some kind of
8 function off of the hard drive.

9 BY MR. FEIN:

10 Q. All right, sir. And Mr. Coombs just asked you
11 a few questions about if you walked by a soldier and saw
12 a soldier on SIPRNET doing some actions. I have a
13 similar question, sir. If you were to walk by a soldier
14 in the SCIF on SIPRNET and saw a soldier using a computer
15 tool that he put on there to download over 250,000
16 documents to burn on to a CD, would you have stopped
17 that?

18 MR. COOMBS: Objection. Argumentative.

19 THE COURT: Overruled.

20

21 BY MR. FEIN:

1 Q. I'm sorry, sir. Could you please answer that?

2 A. Yes.

3 Q. And, sir, were soldiers in your brigade
4 authorized to burn CDs of classified information and use
5 them for personal use?

6 A. No.

7 MR. COOMBS: Thank you, sir.

8 THE COURT: Any cross?

9 MR. COOMBS: No, Your Honor.

10 THE COURT: Temporary or permanent excusal?

11 MR. FEIN: Temporary, Your Honor.

12 THE COURT: All right. Colonel Miller,
13 you're temporarily excused. Please don't discuss your
14 testimony or knowledge of the case with anyone other than
15 the counsel or the accused while the trial is going on.

16 THE WITNESS: Yes, ma'am.

17 MR. FEIN: Ma'am, the United States
18 recommends that we take a lunch recess now and an
19 extended one in order to finalize the last round of
20 stipulations.

21 THE COURT: How long do you need?

1 MR. FEIN: May I have a moment, Your Honor?

2 THE COURT: Yes.

3 MR. FEIN: Ma'am, we plan on 1430 reconvening
4 and we'll notify the court and public if we need more
5 time.

6 THE COURT: All right. Anything else before
7 we recess?

8 MR. FEIN: No, ma'am.

9 MR. COOMBS: No, ma'am.

10 THE COURT: All right. Court is in recess
11 until 1430.

12 (LUNCH RECESS.)

13

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